Merit Commissioner

Upholding Fair Hiring in the BC Public Service

2010/2011 Annual Report

Merit Commissioner

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Office of the
Merit Commissioner

The Honourable Bill Barisoff
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings, Room 207
Victoria, British Columbia V8V 1X4

Dear Mr. Speaker:

It is my honour to present the 2010/2011 Annual Report of the Merit Commissioner. This report is submitted pursuant to section 5.2 of the *Public Service Act*, Chapter 385 of the Revised Statutes of British Columbia.

As an Officer of the Legislative Assembly, I would be pleased to appear and report further on these matters at the request of the Members of the Legislative Assembly.

Respectfully submitted,

Fiona Spencer

Fiona Spencer
Merit Commissioner

Victoria, British Columbia
September 2011

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Table of Contents

Message from the Merit Commissioner 1
The Office of the Merit Commissioner 3
Corporate Overview 3
Audit Advisory Committee 4
Appointments on Merit 5
Overview of the BC Public Service Staffing System 6
BC Public Service Agency Head and Delegated Authorities 6
Merit Commissioner 7
Shared Interest 8
2010 Merit Performance Audit 10
Overview 10
Audit Criteria and Process 10
Scope 11
Results 14
Analysis and Observations 19
Appointment Process 20
Corporate Hiring Pools 22
Assessment 30
Documentation 34
Notification 36
Past Work Performance 39
Years of Continuous Service 41
Summary of Recommendations 44
Special Audit of Auxiliary Appointments 46
Overview 46
Analysis and Observations 48
Results 51
Conclusion 52

Special Study of Lateral Transfers 53
Overview 53
Findings 54
Conclusion 54
Staffing Reviews 55
Overview 55
Decisions 56
Delays in Internal Review 58
Frequency of Requests for Review by the Merit Commissioner 59
Access to Right of Recourse 59
Recommendations 60
Budget and Operations 63
Resources 65
Appendix A: Organizations Subject to Oversight by the Merit Commissioner 66
Appendix B: Report Prepared by BC Stats "Random Selection for the 2010 Merit Performance Audit" 67
Appendix C: BC Public Service Agency's Response to Recommendations 81
Appendix D: Public Service Act 85
Appendix E: Glossary 100

Message from the Merit Commissioner

My first full year as Merit Commissioner was a year of challenge, change and learning. During the course of the year, I have had ongoing discussions with the Head of the BC Public Service Agency (BCPSA), and I met with executives from the BC Government and Service Employees' Union, BC Excluded Employees' Association, and the Professional Employees Association. These meetings gave me some insight into issues of concern with respect to merit-based staffing in the BC Public Service. Through discussions with our federal counterparts and the President of the Public Service Commission of Canada we found similarities in the challenges that confront public-sector employers in maintaining employee and public confidence in a fair and unbiased system.

In 2010 the BC Public Service underwent a major reorganization and continued workforce adjustment that necessitated modified hiring activities to minimize the negative impact of these changes on employees. At the same time, a fundamental and significant change to the staffing system was being introduced with the centralization of services within the Hiring Centre of the BCPSA, the expanded use of corporate hiring pools, and the introduction of an automated recruitment system. To accommodate these changes we modified our audit process, and delayed the start of the 2010 Merit Performance Audit to allow the new hiring system and processes to become fully operational. Also, by ensuring we captured and scrutinized appointments made under the new system we were able to establish a new base-line for future comparisons.

Results of our 2010 Merit Performance Audit indicate that the centralization of hiring services has yet to address deficiencies identified in previous merit performance audits. In fact, we found performance had deteriorated in some areas where it had been anticipated that improvements would be evident. This trend is a cause for concern. I have an added concern that extra vigilance is necessary to ensure the principle of fair hiring is not compromised in the interest of efficiency and simplicity. This is especially true with respect to the use of pooled hiring processes, where the audit identified shortcomings related to the appointment process, referrals, and the inquiry and review procedures.

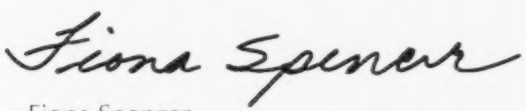
The audit resulted in a number of recommendations and the extent to which the BCPSA has been receptive to our comments and concerns is encouraging; the BCPSA has already made adjustments to its business processes and has indicated a commitment to continuous improvement. We will look for more positive results in future audits.

Going forward, we will conduct a merit performance audit of appointments made throughout the entire 2011 calendar year, will re-examine the use of short-term temporary appointments, and will carry out special studies into pooled hiring and other matters which reflect and influence fair hiring. One such study may relate to employees' right to recourse.

An important aspect of fair hiring is one of accountability; that managers are open, willing and able to explain appointment decisions. Providing employees access to such information as well as information related to their right of recourse helps build trust and confidence in the fairness and quality of hiring decisions. Based on our audit and review findings, as well as our discussions with employees and their representatives, questions are being raised as to whether avenues of recourse and redress now in place are unreasonably restrictive. The short timeframes for questioning appointment decisions, and hiring methods which leave groups of employees without access to recourse suggest some further thought and study is warranted.

No review of the past year would be complete without mention of the recent retirement of Dodie Barber, who has supported successive Merit Commissioners as Manager, Audits and Reviews, since the inception of the Office. Through her dedication and personal commitment she has made a significant contribution to the work of the Office.

With the support of my current team, I look forward to continuing the important work of upholding merit-based hiring in the BC Public Service.



Fiona Spencer

Merit Commissioner

CORPORATE OVERVIEW

The Merit Commissioner is independent of government, appointed by the Legislative Assembly for a three-year term and reports to the members of the Legislative Assembly. The mandate of the Merit Commissioner is to provide oversight of and insight into the conduct of merit-based hiring in the BC Public Service. The Merit Commissioner provides credible and relevant information about the degree to which government is fulfilling its duty to hire and promote employees based on the principle of merit.

The Office of the Merit Commissioner is guided by the principles of fairness and impartiality. We apply to ourselves the same standards of integrity in performance and accountability that we apply to others. All those who contact the Merit Commissioner can anticipate respect and, where it is needed, confidentiality. We are passionate about our work and understand that a vital part of being independent is having the courage to deliver facts and recommendations about what must be improved, as well as reporting progress and accomplishments.

To carry out this mandate, we focus on three business lines: audits; independent staffing reviews; and education about the requirement for merit-based staffing, including its impact on employee engagement. The products of our work include audit reports, studies, review decisions, and educational materials. These outputs all support the long-term goal of building public confidence and a strong consensus that staffing is based on the merit principle and fair process. The Office works toward that goal by producing timely reports on which government will act to produce changes in the conduct of staffing in the BC Public Service.

Audits are carried out in accordance with generally accepted audit standards using methodology reviewed and supported by government's Internal Audit and Advisory Services. BC Stats ensures the necessary level of rigour and objectivity in providing

random and representative samples. The Merit Commissioner uses performance auditors who are trained to ensure that the same standard of scrutiny is applied to all audits.

AUDIT ADVISORY COMMITTEE

The Office incorporates quality assurance reviews into the audit process. Consultation, advice, challenge and further review are provided by an Audit Advisory Committee, established by the Merit Commissioner for this purpose. The Audit Advisory Committee meets quarterly to examine the Office's work plans, discuss issues under consideration by the Merit Commissioner, and provide input. Committee members are selected on the basis of their professional qualifications, relevant knowledge about the public service, and expertise with performance audits.

Appointments on Merit

Merit has been the foundation of staffing in the BC Public Service for over 100 years. Over time, the definition of merit has evolved into the provisions that exist today in section 8 of the *Public Service Act* which states that all appointments to and within the public service must be based on the principle of merit.

Merit is commonly accepted to mean that appointments are made on the basis of an assessment of competence and ability to do the job, and are non-partisan. The *Act* sets out a number of factors that must be considered in determining merit. These include the applicant's education, skills, knowledge, experience, past work performance, and years of continuous service in the BC Public Service.

The recruitment and selection processes that result in merit-based appointments include some essential elements: the process is transparent and fair; the assessment method used is relevant to the job; and the decisions that are made are reasonable. Merit-based hiring considers the legislation and hiring policy and, where applicable, collective agreement requirements.

The *Public Service Act* distinguishes permanent and longer-term temporary appointments from those that are auxiliary or short-term temporary appointments. Employees with permanent and longer-term temporary appointments form part of the core professional career public service on which the government relies for advice and expertise. It is understandable, therefore, that a rigorous standard for making these types of appointments is set out in the *Act*.

Specifically, permanent and temporary appointments exceeding seven months are to be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants. These appointments require recruitment to attract applicants who will be assessed for merit against the selection criteria required for the job. A competitive process allows applicants to be rated, and ranked relative to one another so that those who are successful are considered the best-qualified candidates.

Auxiliary appointments and appointments of regular employees for temporary periods of seven months or less also require consideration of merit. A competitive process is not required by the *Act* but an individual's merit for appointment must be determined.

Overview of the BC Public Service Staffing System

The *Public Service Act* lays out the accountabilities of the Head of the BC Public Service Agency (Agency Head) and the Merit Commissioner with respect to merit-based appointments in the BC Public Service.

BC PUBLIC SERVICE AGENCY HEAD AND DELEGATED AUTHORITIES

The Agency Head, accountable to the Minister of Finance, is responsible for personnel management in the public service including, but not limited to, advising the minister with respect to personnel policies, standards, regulations and procedures and providing direction, advice and assistance to ministries in the conduct of personnel management. This includes specific authority for the recruitment, selection and appointment of persons to or within the public service, as well as training and development. As the BC Public Service Agency (BCPSA) is a shared services organization, the Agency Head is also accountable to organizational heads through service-level agreements, to the Deputy Ministers' Council, and to clients and customers in all public service ministries and agencies.

Through the Corporate Human Resource Management Accountability Framework (Accountability Framework) and human resource policies, certain responsibilities are assigned to deputy ministers and hiring managers across the BC Public Service.

All deputy ministers are accountable to the Deputy Minister to the Premier for the implementation of the Corporate Human Resource Plan. As well, deputy ministers are responsible for human resources within their organizations and for ensuring that these responsibilities are carried out consistent with applicable legislation, collective agreements, terms and conditions of employment, the Accountability Framework, and human resource policies. While deputy ministers retain overall accountability for human resource management in their organizations, the responsibility for most appointment decisions has been further delegated to individual managers.

Mandated by the Deputy Ministers' Council, hiring administration has been centralized at the BCPSA's Hiring Centre. In this service delivery model, BCPSA staff provide hiring services and advice to client organizations and assume responsibility for certain phases of a staffing process, as defined in a recruitment plan established at the beginning of a hiring process. In addition, the Hiring Centre has assumed responsibility for the centralized retention of documentation to support staffing decisions.

Independent organizations that appoint staff under the authority of section 8 of the *Act* may not receive hiring services through the BCPSA and, therefore, retain responsibility for both the staffing processes and the resulting decisions.

MERIT COMMISSIONER

The Merit Commissioner is accountable to the members of the Legislative Assembly and reports to them annually on the results of activities in monitoring the application of the merit principle under the *Act*, including the results of audits and the outcome of staffing reviews.

Merit Performance Audit

The Merit Commissioner provides independent oversight of the application of the merit principle in hiring and promotions. Merit performance audits of appointments assess whether:

- recruitment and selection processes are properly applied, to result in merit-based appointments, and
- individuals appointed are qualified.

Detailed audit findings are reported to appropriate deputy ministers or organization heads who are expected to follow up as necessary to improve hiring practices within their organizations. Overall audit results are provided to the Head of the BCPSA and made available to the Legislative Assembly through an annual report.

Review of Staffing Decisions

The *Public Service Act* provides employees who are unsuccessful applicants in a competition the right to request a review of a hiring or promotion decision. There is a three-step staffing review process which begins when the employee is notified of the outcome of

a competition. The employee may request feedback from the hiring manager on their performance during the staffing process or the reasons why he or she was not appointed. If unsatisfied, the employee may then request an inquiry by the deputy minister into the application of the principle of merit. For employees who are applying for an excluded position, the deputy minister's decision is final. For employees who are applicants to bargaining-unit positions, there is further recourse available: an independent review by the Merit Commissioner. The Merit Commissioner may find that the appointment was merit-based or may direct the deputy minister to reconsider the appointment or proposed appointment. The Merit Commissioner's decision is final and binding.

SHARED INTEREST

Responsibility for upholding merit-based hiring and promotions in the BC Public Service is shared broadly. Employees' opinions on merit-based and fair staffing practices are solicited through the BC Public Service's Work Environment Survey, administered by BC Stats. Responses to questions related to staffing are examined and considered as the Merit Commissioner develops audit plans. The bargaining units which represent most BC Public Service employees (BC Government and Service Employees' Union (BCGEU), the Professional Employees Association (PEA), and the Nurses' Union) as well as the BC Excluded Employees' Association all have long records of encouraging and supporting merit-based hiring in the public service.

Table 1 summarizes accountabilities for hiring in the BC Public Service.

Table 1: Staffing Accountabilities – BC Public Service Staffing System

Merit Commissioner	• Monitors and reports on merit in staffing through random audits • Provides final and binding decisions on merit through staffing reviews for bargaining-unit positions • Reports annually to the Legislative Assembly
BC Public Service Agency Head	• Sets staffing policies and the accountability framework for human resource management with the Deputy Ministers' Council • Provides staffing support and training to client groups in the BC Public Service • Delegates responsibilities for staffing activities to deputy ministers or heads of organizations • Retains overall responsibility for competition documentation • Authorizes direct appointments in unusual or exceptional circumstances
Deputy ministers/ organization heads	• Work as a Council to carry out the corporate human resource plan • Sub-delegate staffing activities to line managers/supervisors • Respond to the second step in a staffing review process • Receive and take action as appropriate on the Merit Commissioner's audit findings and decisions following staffing reviews
Managers/supervisors	• Make recruitment, selection and appointment decisions • Conduct the first step in a staffing review process by providing feedback to applicants
Employees	• Provide views on merit-based hiring and fair process by completing the BC Public Service Work Environment Survey • As applicants, may request staffing reviews of proposed hiring or promotion decisions

2010 Merit Performance Audit

OVERVIEW

The Merit Commissioner is responsible for monitoring the application of the merit principle under the *Public Service Act* by conducting random audits of appointments to and from within the public service. The audit results are reported to the deputy ministers or other persons having overall responsibility for the ministries, boards, commissions, agencies or organizations in which the audited appointments were made.

AUDIT CRITERIA AND PROCESS

The audit assesses appointments against the dual test of merit as set out in the *Act*: whether the recruitment and selection processes were properly applied to result in appointments based on merit; and whether the individuals appointed possessed the required qualifications for the positions to which they were appointed.

Merit performance audits are based on the underlying premise that the manager of the position, who understands the needs of the business, is in the best position to decide what qualifications and competencies are critical for the position, and the most suitable tools and methods to assess them. Provided that the hiring process is reasonable and job-related, the audit does not replace a manager's judgment with respect to these factors.

Using an established audit program, and based on documentation or other evidence provided by the BCPSA or the organization, an auditor reviews the steps and decisions made throughout the recruitment and selection process to determine whether the merit principle was upheld. For example, the auditor confirms: whether the basic legislative, policy and collective agreement requirements relevant to merit-based hiring have been met; whether the factors of merit, as stated in the *Public Service Act*, have been considered (i.e., education, skills, knowledge, experience, past work performance and years of continuous service in the public service); whether applicants have been assessed through a fair and transparent process; and whether hiring decisions were communicated to employee applicants. (Full details of the program used by the auditors are available on the Merit Commissioner's website at www.meritcomm.bc.ca.)

SCOPE

Any organization or ministry appointing employees under section 8 of the *Act* may be subject to audit. (A list of these organizations is included in Appendix A.) The audit encompasses appointments to positions in bargaining units and management excluded positions.

Appointment Types

Appointments under section 8 of the *Act* include auxiliary appointments, permanent appointments and temporary appointments of employees. Within the scope of the audit are those appointments forming the long-term workforce of the BC Public Service. Specifically, these include permanent appointments and temporary appointments of employees exceeding seven months, which are required by section 8(1)(b) of the *Act* to be the result of a process that assesses eligible applicants' knowledge, skills and abilities. Auditing these types of appointments, where a candidate's individual merit is assessed and ranked relative to that of other candidates through a competitive process, reveals the most information about how the principle of merit is being applied. Direct appointments are required to be made under the authority of section 10(b) of the *Act* and are also included in the audit to ensure the required approvals are in place.

Time Frame

In past years, with the exception of 2008 when no annual audit was conducted, the Office of the Merit Commissioner's merit performance audit covered appointments made throughout the calendar year. The 2010 Merit Performance Audit was atypical in that the audit was focused only on appointments made between September 1, 2010 and December 31, 2010. The decision to conduct a partial year audit was related to a fundamental shift in the way human resource services are provided in the BC Public Service that occurred in October 2009. This shift included the consolidation of hiring services into the BCPSA, the creation of the Hiring Centre and the implementation of an electronic recruitment system. Focusing the audit on appointments made after September 1, 2010 allowed the public service time to adjust to the new system. Although a partial year audit allows only limited comparability with previous audit years, it ensured that only appointments made under the new processes were captured.

Appointment and Sample Details

The audit population consisted largely of appointment data provided by the BCPSA which was drawn from the Corporate Human Resource Information and Payroll System (CHIPS). Data was drawn twice: in early November 2010 (capturing the September to October appointment population); and in early January 2011 (capturing the remaining appointments to the end of December 2010). Information on appointments made by the Liquor Distribution Branch and the Forensic Psychiatric and Riverview Hospitals (BC Mental Health and Addiction Services)[1], maintained in databases separate from the overall BC Public Service, was obtained directly from those organizations. In total, 1,048 permanent appointments, temporary appointments exceeding seven months, and direct appointments were reported.

The random selection of appointments from the population was conducted by BC Stats. To ensure that the samples were representative, each population was stratified prior to the random selection process. Categories used to stratify the appointment data included the size of the ministry or organization; appointment type (permanent, temporary or direct appointments); and bargaining-unit or management excluded appointment status. An additional stratum was used on the CHIPS data: appointments in the 'Administrative Support' occupational category. This new stratum was selected and sampled at a higher rate to ensure that the audit included a number of appointments made from the corporately administered clerical pool. Also, surveys in the BC Public Service have indicated that this occupational category is among the lowest-scoring with respect to employees' perceptions of fair or merit-based staffing. Increasing the representation of clerical appointments in the audit had the added effect of providing insight into the hiring practices for this group.

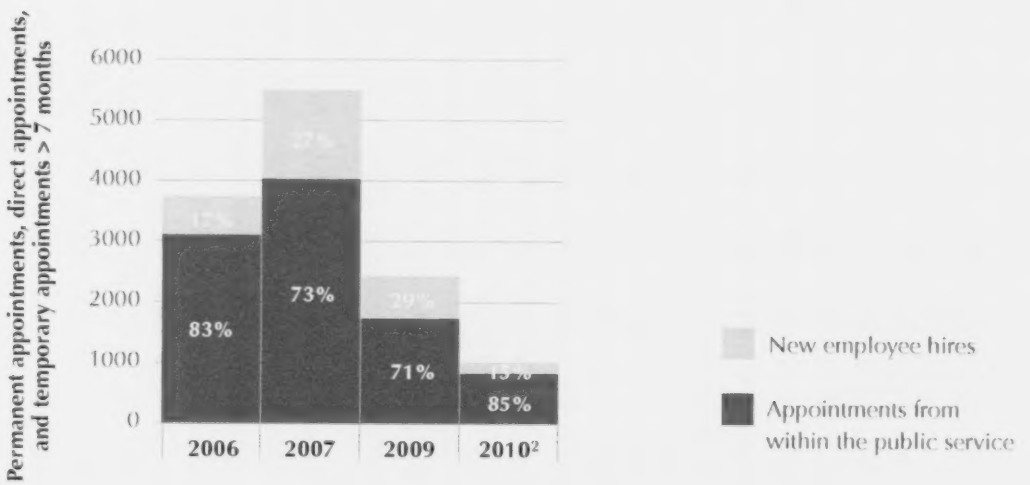
Two samples were pulled from the CHIPS data and resulted in an overall sample size of 31.2 per cent for appointments to positions in the Administrative Support category, and 16.1 per cent for the remaining appointments. Appointment information from the Liquor Distribution Branch and the Forensic Psychiatric and Riverview Hospitals were each sampled once, at the rate of 18.4 per cent overall. This sampling rate resulted in an audit

[1] This is the first year that appointments made at the Forensic Psychiatric Hospital and Riverview Hospital (BC Mental Health and Addiction Services) have been included in a merit performance audit.

sample of 206 appointments, 23 of which were subsequently determined to be outside the scope of the audit due primarily to coding errors in the CHIPS data base. Therefore, a total of 183 appointments were audited: an overall sample rate of 19.4 per cent based on an adjusted population of 942 appointments (BC Stats has verified that the sample was sufficiently large that the results can be generalized from the sample to apply to the larger population of these types of appointments made during the same time period in 2010).

Chart 1 shows the year-to-year comparison of the number of appointments in the adjusted audit population since 2006. Appointments of new employees to the public service accounted for approximately 15 per cent of in-scope appointments in 2010, compared to 29 per cent in 2009.

Chart 1: Year-to-Year Comparison of Adjusted Annual Audit Population[1]



[1] An annual audit was not conducted in 2008 due to the transition to a new audit approach.

[2] The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

RESULTS

Qualifications

The 2010 audit found no evidence that any individual was not qualified for the position to which he or she was appointed. In one appointment, the audit was unable to make a determination as to whether the employee appointed was qualified for the position as the job qualifications were not defined. This particular audit is described in further detail later in this report in case #5.

Recruitment and Selection Process

Table 2 shows the overall results of the 2010 Merit Performance Audit. The results indicate strengths and weaknesses of merit-based hiring during the period of audit.

Of the 183 appointments audited, 78.1 per cent were found to be the result of a merit-based process with no exceptions. A further 17.5 per cent were also found to be based on merit, but issues were identified with either the conduct of the process or the application of hiring policy or collective agreement obligations. Although the appointment decisions were not affected, the audits found substantial flaws, errors or omissions. These appointments were categorized as "merit with exception".

The audit found that 4.4 per cent of the appointments were not the result of a merit-based process. In four of these cases, the audit found an unreasonable recruitment and selection process which compromised the integrity of the appointments. In one case, the audit found inconsistent treatment of candidates and in three other cases, there was an inaccurate assessment of the employee candidates' years of continuous service (a factor of merit) which resulted in erroneous appointments. These cases are discussed later in this report.

As mentioned, BC Stats has verified that the audit sample was sufficiently large that the results can be extrapolated from the audited appointments to the population of appointments made during the same time period in 2010. Further details are contained in BC Stats' report in Appendix B. Table 2a shows the extrapolated results.

Table 2: Merit in the Recruitment and Selection Process 2010 Merit Performance Audit[1]		
Conclusion	**Number of Appointments Audited**	
Merit applied	143	(78.1%)
Merit with exception[2]	32	(17.5%)
Merit not applied	8	(4.4%)
Total appointments audited[3]	**183**	**(100.0%)**

[1] The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

[2] Process was merit-based, but there were exceptions to basic hiring policy or collective agreement obligations.

[3] The audit sample consisted of 206 appointments, of which 23 were determined to be outside the scope of the audit, resulting in the audit of 183 appointments.

Table 2a: Extrapolated Results – Estimated Population[1] 2010 Merit Performance Audit[2]		
Conclusion	**Estimated Population of Appointments**	
Merit applied	741	(78.7%)
Merit with exception	164	(17.4%)
Merit not applied	37	(3.9%)
Total estimated population of appointments	**942**	**(100.0%)**

[1] The extrapolation of 2010 audit results was constrained to the same four-month period as the audit. Weighted extrapolations were provided by BC Stats.

[2] The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

Overall, the audit results point to areas of potential risk to merit-based staffing in the BC Public Service. In 21.9 per cent of the appointments examined in the audit – and by extrapolation, in an estimated 21.3 per cent of appointments made during the same four-month period in 2010 – managers did not follow basic hiring policy, collective agreement provisions, or statutory obligations that relate to merit.

Comparison of Results for the Administrative Support Category

As outlined previously, the audit included a higher rate of sampling for appointments in the Administrative Support occupational category. Table 3 provides the audit results for this category, and Table 3a provides the extrapolated results. The audit found no significant difference between the Administrative Support category and the general population.

Table 3: Audit Results – Administrative Support Occupational Category [1] 2010 Merit Performance Audit[2]

Conclusion	Number of Appointments Audited			
	Admin		Non-Admin	
Merit applied	49	(75.4%)	85	(78.0%)
Merit with exception	13	(20.0%)	19	(17.4%)
Merit not applied	3	(4.6%)	5	(4.6%)
Total appointments audited	**65**	**(100.0%)**	**109**	**(100.0%)**

[1] Stratification by Administrative Support occupational category was undertaken only for appointments in the general population, i.e., excludes Liquor Distribution Branch and Forensic Psychiatric and Riverview Hospitals (BC Mental Health and Addiction Services).

[2] The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

Table 3a: Extrapolated Results – Administrative Support Occupational Category [1] 2010 Merit Performance Audit[2]				
Conclusion	**Estimated Population of Appointments[3]**			
	Admin		**Non-Admin**	
Merit applied	156	(74.6%)	536	(78.4%)
Merit with exception	43	(20.6%)	121	(17.7%)
Merit not applied	10	(4.8%)	27	(3.9%)
Total estimated population of appointments	**209**	**(100.0%)**	**684**	**(100.0%)**

1 Stratification by Administrative Support occupational category was undertaken only for appointments in the general population, i.e., excludes Liquor Distribution Branch or Forensic Psychiatric and Riverview Hospitals (BC Mental Health and Addiction Services).

2 The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

3 The extrapolation of 2010 audit results for the Administrative Support and Non-Administrative Support occupational categories was constrained to the same four-month period as the audit. Weighted extrapolations were provided by BC Stats.

Year-by-Year Merit Performance Results

Table 4 and Chart 2 provide the findings over past years. In 2010, the two "merit" categories (i.e., appointments that were the result of a merit-based process or that were determined to be merit with exception as issues were identified with either the conduct of the process or the application of policy), together represent 95.6 per cent of findings. The four-month 2010 audit found that merit was not applied in 4.4 per cent of the appointments audited; in 2009 the rate was 2.3 per cent.

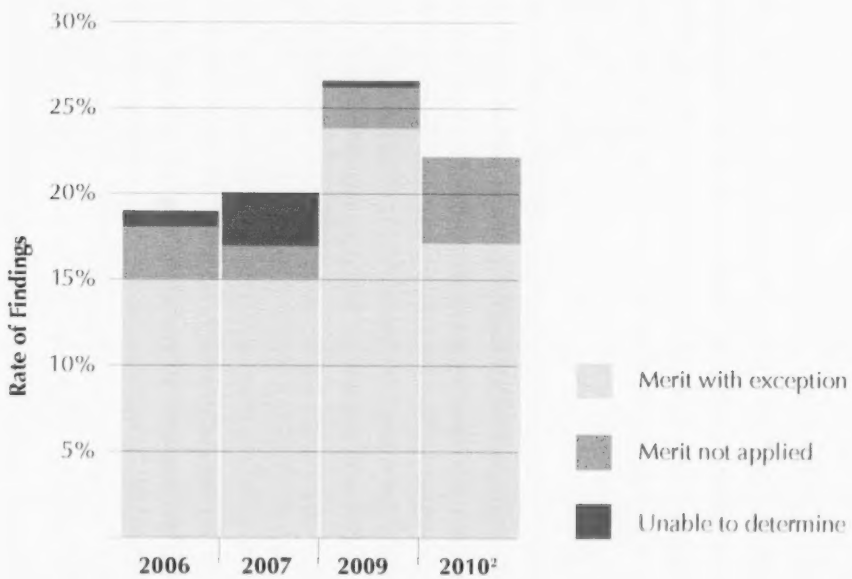
The audit findings indicate that the changes to the hiring process introduced in the BC Public Service have yet to address some previously identified deficiencies in conducting merit-based processes.

Table 4: Year-by-Year Merit Performance Results[1]				
	2006	**2007**	**2009**	**2010[2]**
Total appointments audited	**308**	**531**	**302**	**183**
Merit applied	249 (81%)	423 (80%)	222 (73.5%)	143 (78.1%)
Merit with exception	47 (15%)	81 (15%)	72 (23.8%)	32 (17.5%)
Merit not applied	9 (3%)	12 (2%)	7 (2.3)%	8 (4.4)%
Unable to determine	3 (1%)	15 (3%)	1 (0.3%)	nil

[1] An annual audit was not conducted in 2008 due to the transition to a new audit approach.

[2] The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

Chart 2: Year-by-Year Findings Other than "Merit Applied"[1]



[1] An annual audit was not conducted in 2008 due to the transition to a new audit approach.

[2] The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

ANALYSIS AND OBSERVATIONS

Table 5 indicates the major issues identified through the 2010 Merit Performance Audit, and provides some insight into the hiring practices across the BC Public Service. Appointments made from September 1, 2010 to December 31, 2010 through the new centralized hiring and corporate recruiting processes confirm significant issues continue to occur in the assessment of years of continuous service through the "qualified relatively equal" (QRE) calculation (which is required only for appointments to positions in the BCGEU) and in documentation. Issues related to appointment processes also remain a concern, as do issues related to notification.

The following sections of this report provide further details related to the results of this audit.

Table 5: Issues Identified – 2010 Merit Performance Audit

Issue	Number of Appointments			2010[1] % of Audits (183)	2009[2] % of Audits (302)
	Merit with Exception	Merit not Applied	TOTAL		
Appointment process	–	4	4 (8.3%)	2.2%	1.3%
Assessment	2	1	3 (6.3%)	1.6%	3.6%
Documentation	14	–	14 (29.2%)	7.7%	5.3%
Notification	6	–	6 (12.5%)	3.3%	8.3%
Past work performance	3	–	3 (6.3%)	1.6%	2.0%
Qualified relatively equal calculation (BCGEU)[3]	15	3	18 (37.5%)	13.1%	11.7%
Total issues	**40[4]**	**8**	**48 (100%)[5]**		

1 The 2010 Merit Performance Audit covered appointments made between September 1, 2010 and December 31, 2010.

2 The 2009 Merit Performance Audit covered appointments made between January 1, 2009 and December 31, 2009.

3 The qualified relatively equal (QRE) calculation is mandatory for BCGEU positions only. The percentage figure shown is based on the percentage of BCGEU appointments audited (i.e., in 2010, 18 of 137 BCGEU appointments; and in 2009, 24 of 205 BCGEU appointments).

4 Of the 32 audits where merit was found to have applied but the recruitment and selection process was flagged with exception, eight audits identified more than one issue for a total of eight additional issues (i.e., 40 issues in total).

5 Of the 40 audits where merit was found not to have applied or applied with exception in the recruitment and selection process, eight audits identified more than one issue for a total of eight additional issues (i.e., 48 issues in total).

Appointment Process

Section 8(1) of the *Public Service Act* requires appointments to and from within the public service to be based on the principle of merit and that relative merit be assessed through a process designed to appraise the knowledge, skills and abilities of eligible applicants.

The audit determines whether the recruitment process used a reasonable and transparent approach to attract an appropriate applicant pool with the necessary skill set, given the requirements of the position; and whether applicants were assessed for merit relative to each other, resulting in the appointment of the best-qualified candidates.

Under section 10 of the *Act*, there are exceptions permitted to the general statutory requirement for a competitive process. For example, a direct appointment of an individual into a position which is a promotion for the individual is one exception that may apply. After assessing an individual's merit relative to the job requirements, an organization may outline to the Head of the BC Public Service Agency the unusual or exceptional circumstances they consider may warrant a direct appointment. The Agency Head then may exercise sole authority to approve a direct appointment under section 10(b)(iii) of the *Act*.

Results

The 2010 Merit Performance Audit found that merit did not apply in four of the appointments audited as they were not considered to be the result of a process authorized under the *Act*. Despite these findings, the audit found that the individuals were considered qualified for the positions to which they were appointed.

Two of these appointments, which are described next, involved matters related to direct appointments. In one case, a direct appointment was made without proper authority and in another a questionable "competitive" process was conducted. The other two appointments involving pre-qualified applicant pools and circumvention of established hiring practices are described later as Case #3 and Case #4 in the section titled "Corporate Hiring Pools". In all cases, the intent of the merit principle was not served in making these appointments.

Case #1: Unauthorized Direct Appointment

In this case, the organization permanently appointed an employee directly into a position that constituted a promotion, without competition. The employee had been acting in the position for over four years and the earlier temporary appointment had also been made without a competitive process.

Evidence was provided by the organization to indicate how the individual met the factors of merit and the circumstances that precipitated the need to appoint this specific employee without competition. It was also confirmed that approval for a direct appointment was not sought. As this promotional appointment was made without a competitive process or without the authority of the Agency Head, the audit found it was not merit-based.

Case #2: Unreasonable Competition

A merit-based process must involve a reasonable and transparent approach to advertising opportunities that will attract an appropriate candidate pool with the necessary skill set.

In this case, following an unsuccessful attempt to reclassify an employee into another similar position with specialized requirements, the hiring manager went to the BCPSA for the authority to make a direct appointment; however, the manager was advised to proceed with a restricted competition. The audit, therefore, focused on the appointment process that was undertaken as a result of this advice.

The competition was restricted to two eligible employees in the work unit, one of whom was already working at the posted level in another city and therefore not a likely candidate for the position (and in fact expressed no interest in applying). The audit determined that the restriction applied to the competition could not be considered to have met the test of reasonableness as it effectively rendered the results of the competition a foregone conclusion. This process could not be considered a genuine competition. If the operational requirements that precluded a wider posting were legitimate, then the evidence suggests the

Head of the BC Public Service Agency should have been given the opportunity to consider the possibility of a direct appointment or should have recommended that the area of competition be expanded to encompass a reasonable candidate pool. The audit found that the appointment was not merit-based.

Restricted Competitions and Managed Staffing Strategy

The BC Public Service continues to recruit under the provisions of a managed staffing strategy. These provisions have been in effect since October 2009. Available vacancies are filled first by qualified employees who have been impacted through government reorganization; otherwise, the position is posted internal to the BC Public Service. A deputy minister may make a request to the Hiring Centre that an opportunity be open to non-employees through an external posting. This corporate control of external recruitment ensures that employees in the workforce adjustment process are given first consideration for suitable vacancies, and protects career advancement opportunities for potential applicants already employed in the public service. These restrictions have resulted in the circumstance where approximately 76 per cent of the appointment processes audited in the four-month 2010 audit were open only to employee candidates, whereas in 2009 the figure was 18 per cent.

Of the in-service competitions, the audit noted that a significant number (approximately 43 per cent) were restricted even further, to specific organizational units, geographical locations, or groups of employees. In these instances, the audit noted no evidence of corporate oversight or controls in place. Ministries were able to post and fill positions internally without the involvement of the Hiring Centre. Given the significant government reorganizations in 2010, restricted competitions were accepted as reasonable; however, the Office will continue to monitor this situation to ensure that the requirement for a fair, open and transparent process is not compromised.

Corporate Hiring Pools

Overview

The model traditionally used to fill public service vacancies has been to post notice of individual positions as they become available. Alongside the traditional model, the BCPSA developed a corporate approach to hiring which is administered through the Hiring

Centre. The alternative approach – presently in place for certain positions such as clerical positions and Employment and Assistance Worker (EAW) positions – is to hire from pools of pre-qualified applicants. The creation of these pools is intended to streamline the staffing process to fill high-volume positions, thus eliminating the requirement to run competitions on a position-by-position basis.

Under the pool approach, the opportunity is posted advising interested persons that a defined pool will be open to those who satisfy threshold testing and qualification competencies. Persons who respond, and who undergo and meet the testing and qualification requirements, are placed in the pool.

When a manager subsequently requires a person with those base qualifications, the manager makes a request to the Hiring Centre. The Hiring Centre provides the manager with a short-list of candidates, based principally on the date of a person's entry into the pool and their preferred working location (if applicable). The short-listed candidates are then subject to further assessment by the manager, and a successful candidate is chosen.

Clerical Pool

The audit included five appointments made from the Clerical Pool used to fill various administrative support positions. The opportunity to be included in the pool was posted to the BC Public Service Job Opportunities website at various times during the year. Applicants were asked to indicate their preferred work locations and were advised that they would become part of the Clerical Pool once they were considered to have met the qualifying criteria. Through a process administered by the Hiring Centre, applicants completed 12 tests to assess computer and clerical skills and abilities. Following the successful completion of these tests, they were interviewed to assess three behavioural competencies. To be considered prequalified for a specific classification level, applicants must have achieved certain scores in the skills tests and specified target levels with respect to the behavioural competencies. Individuals in the pool were not ranked.

When the requirement to fill a position arose, managers could either request the Hiring Centre make referrals from the pool or adopt the traditional approach of soliciting applications through an individual posting. Referrals from the pool were made from among applicants who were pre-qualified for the level of the position and who possessed any additional qualifications the manager specified as required for the particular position.

Candidates were short-listed based on their date of entry into the pool and preferred working location, and were contacted by the Hiring Centre to confirm their interest in the position being filled before they were referred. Managers were also able to request that the Hiring Centre include specific individuals in the referrals. On average, three candidates were referred to the hiring manager who was then responsible for the rest of the assessment process and final selection.

One of the appointments from the Clerical Pool which was subject to audit was found not to be merit-based, as described in Case #3.

Case #3: Unreasonable Clerical Pool Referral

In this case, the manager requested that referrals from the Clerical Pool be supplemented by the inclusion of a specific individual. At that time, the person was not in the pool and had not been assessed to determine qualifications for referral. The named individual was assessed by the Hiring Centre for computer and clerical skills, but not for the education and experience requirements of the position or the necessary core competencies, as is normally required prior to referral. Nevertheless, the Hiring Centre referred the named individual, along with the only qualified and interested applicant from the pool.

The inclusion of a candidate from outside the established pool referral process, without giving other potential applicants the same opportunity, could be seen as circumventing the process and granting preferential treatment. As the auditor noted that the previous solicitation for applicants to the pool was posted six months prior to the appointment in question, it was reasonable to assume that there may have been others within the organization who would have been eligible for and interested in such a position. As other potential applicants were not offered the opportunity for consideration, the audit found that the process to appoint this individual failed to meet the requirement of a fair, open and reasonable recruitment process and therefore was not merit-based.

Employment and Assistance Worker Pool

The audit included 10 EAW appointments made through the pre-qualified EAW Pool established by the Ministry of Social Development in conjunction with the BCPSA, to facilitate recruitment and selection for EAW positions across BC. The opportunity was posted to the BC Public Service Job Opportunities website and was open to both in-service and out-of-service applicants. To pre-qualify for the EAW Pool, applicants who met the education and experience requirements were asked to complete a Comprehensive Candidate Profile (CCP), designed to assess analytical abilities and four behavioural competencies. (The CCP tool was administered and evaluated by an external service provider.) All applicants who achieved predetermined scores on the factors assessed through the CCP were considered pre-qualified for inclusion in the EAW Pool.

Once accepted into the EAW Pool, applicants were referred to hiring managers based on their date of entry into the pool and preferred working location. Hiring managers then further assessed these individuals through an interview and reference checks. Successful candidates were offered positions in rank order.

Of the 10 appointments from the EAW Pool which were audited, one – described as Case #4 – was found to not be the result of a merit-based process.

Case #4: Unauthorized Circumvention of EAW Pool

This case relates to the appointment of an individual as an EAW that resulted from a circumvention of the established EAW Pool process. The auditor confirmed that the appointee did not come from the EAW Pool despite the fact that at the time of this appointment there were eligible candidates in the EAW Pool awaiting referral. The hiring manager chose to circumvent the agreed-to hiring process and directly assessed and appointed the individual. This appointment not only undermines the credibility of the EAW Pool process, but also is seen as giving preferential treatment to the individual appointed. A direct appointment is an exception to the general statutory requirement of a competitive process to staff a position, and must be authorized by the Head of the BC Public Service Agency. As this appointment was made without such authorization or without a competitive process the audit found that the appointment was not the result of a merit-based process.

Discussion

Although there are efficiencies with the use of pre-qualified applicant pools, the question raised through the 2010 Merit Performance Audit is whether and to what extent appointments from the corporate hiring pools satisfy the merit principle in the *Public Service Act*. This is an issue of special interest to the Merit Commissioner not only because the pools represent an alternative to traditional hiring practices, but because the pool approach, while presently limited, may well be expanded to other occupational groups.

As a matter of principle, a pre-qualified applicant pool is not incompatible with the imperative to ensure that appointments are based on merit. However, in the case of the corporate hiring pools, the Merit Commissioner has identified four issues of concern which must be addressed in order to ensure compliance with the merit principle.

1. Criteria: timing versus merit

First, the criteria by which applicants are referred out to managers appear to be problematic. While the preferred working location criterion is legitimate, the question arises as to why the Hiring Centre refers applicants out on a "first in, first out" basis rather than based on relative merit (e.g., based on the scores that individual applicants earned on the testing which successfully pre-qualified them for placement in the pool). From a merit perspective, there is no principled reason to give first priority to a lower-scoring applicant simply because they meet "minimum" requirements and have been in the pool longer. The merit principle should be given robust application so that the highest-scoring applicants, with regard to the skills required for the position being staffed, are the first applicants to be offered the referral.

2. Referrals from outside the pool

Second, the audit provided evidence that in some cases, the Hiring Centre permits managers to make special requests to include a specific individual in the short-list of "referrals". These individuals may already be part of the pool but not necessarily guaranteed to be referred based on their date of entry into the pool, or they may not even be part of the pool, thereby undermining the purposes of a pool and the reasonable expectations of those who worked to qualify for inclusion in the pool. (The two cases described previously illustrate this problem.)

3. Application of sections 17-19 of the Public Service Act

Third, based on the audit, the Merit Commissioner is concerned that the corporate pool

hiring process, as presently administered, is not in compliance with the "request, inquiry and review" provisions set out in sections 17 to 19 of the *Act*. (See Appendix D.)

The Office's understanding of the BCPSA's position on this matter is that not all employees who have responded to the posting soliciting interest to become part of a pool, or even those who are successful in being placed in the pool, are considered to be "unsuccessful applicants" and entitled to exercise the rights outlined in sections 17 to 19 when an appointment is made. The BCPSA's position is that the only persons who are entitled to these statutory rights are those employees who were placed on a short-list of applicants actually referred to the hiring managers.

The "request, inquiry and review" provisions referred to are easily applied to the established method of posting individual positions: for each appointment decision made through a competitive process, any employee applicant is entitled to these rights. With respect to the process of creating and utilizing "hiring pools", the application of these provisions is more difficult. As a matter of interpretation, three possible views of what these provisions mean might be taken:

a) The most restrictive approach would be that the only person who is properly considered an "unsuccessful applicant for an appointment to the public service" is a person the Hiring Centre has chosen to refer to the manager from the pool. As just noted, this is the view that has so far been taken by the BCPSA.

b) The intermediate view is that an "unsuccessful applicant for an appointment to the public service" is limited to any person within the pool whether or not they are referred to a manager when the manager makes a request for individuals to be referred. In this view, an unsuccessful applicant is a person capable of being referred to the manager when a specific position comes available. This would include everyone in the pool, except for those who have taken themselves out of the running, as for example, based on a location limitation or a refusal when approached for the referral.

c) The broadest view is that an "unsuccessful applicant for an appointment to the public service" is anyone who has applied to be in the pool whether or not they have been accepted into the pool or rejected. This view recognizes that if admission to the pool is a precondition to being considered for any job that comes available for that position,

> and if a particular employee applicant to the pool is rejected for entry into the pool, that employee is as much an unsuccessful applicant for an appointment, who has rights under sections 17 to 19 when a particular position comes available, as any employee within the pool.

The Merit Commissioner has serious misgivings about whether the first approach is legally correct or consistent with the language and purpose of the legislation. While the practicality of the second approach is appreciated, the approach that is most in line with the language and purpose of the legislation is the third.

The reality is that everyone in or applying to a hiring pool is there because they want to be considered for any related employment opportunity that comes available. Once a manager notifies the Hiring Centre that a position must be filled, it is self-evident that all the applicants who competed to be in the pool and were rejected, or who are in the pool and awaiting referral, would want to be in the running unless they have otherwise declared a lack of interest based on location or other reasons.

It ought to be necessarily implicit that if the individual position was posted, those applicants would have made individual applications and all employee applicants would have had the rights as outlined in sections 17 to 19. The only reason they did not is because the BCPSA chose one hiring mechanism (a pool) over another (a posting).

The purpose of the *Public Service Act* is to ensure that persons applying for public service positions are selected based on merit. The rights set out in sections 17 to 19 of the *Public Service Act* are crucial accountability provisions that serve that end by giving an employee applicant the right to question why he or she was not selected for a position that was given to someone else. Clearly, those persons who have taken the time, effort and testing to be part of a pool, and who have not otherwise excluded themselves, are doing so because they are indeed applying for any job that comes available.

In addition, as the last step in the "request, inquiry and review" provisions is a review by the Merit Commissioner, that right is obviously frustrated if decision-makers are not according an employee applicant their rights to the first two steps under the *Act*.

4. Access to information by Merit Commissioner for audit purposes

The BCPSA's view that there is no "applicant" except for those it short-lists from a pool on a particular referral gives rise to the fourth issue of concern, namely, the impact on the Merit Commissioner's ability to thoroughly conduct audits of appointments created through the pool process, including the front-end process by which persons are placed into the pool to begin with.

It should be emphasized that the Merit Commissioner's jurisdiction to conduct audits does not depend on which of these individuals are applicants for the purposes of sections 17 to 19, discussed previously. Whatever the answer to that question, this jurisdiction is broad and clear: the Merit Commissioner is responsible for monitoring the application of the merit principle by conducting random audits of appointments.

The merit principle encompasses not only individual appointment decisions, but the systems and processes government uses to make those decisions. It is not possible to meaningfully undertake "random audits of appointments" under section 5.1(1)(a) without reviewing the fundamental basis and processes on which those appointments were made and on which hiring pools were created. If the processes used to place individuals in a pool are fundamentally flawed to begin with – because they are unreasonably excluding persons who are applying to be in the pool, or because they are including persons who are not qualified – this affects the merit principle. As such, the Merit Commissioner has the right to this information.

Recommendations with Respect to Appointment Process: Corporate Hiring Pools[1]

In light of the discussion above, the Merit Commissioner makes the following recommendations.

1. That in making referrals from the corporate hiring pools, offers of referral should be given to the most qualified applicants rather than be based on the date of a person's placement in the pool.

2. That when the corporate hiring pool is utilized, the BCPSA cease the practice of allowing candidates to be added from outside the hiring pool to the list of referrals from the pool.

3. That the BCPSA reconsider its position regarding who is an employee "applicant" and accept that any time a job is filled from the pool, all employee applicants to or within the pool who have not otherwise declared a lack of interest be notified of their rights under sections 17 to 19 of the *Act*.

4. That the BCPSA commit to ensuring that the Merit Commissioner will, for audit purposes, receive all information requested pertaining to all aspects of the corporate hiring pools.

Assessment

Audits are conducted on the premise that managers are responsible for determining the critical qualifications required for a job and for choosing the most appropriate tools and methods to assess candidates against these qualifications. Accurately describing and posting these qualifications is critical to a transparent and merit-based process. It helps potential applicants determine if they are eligible to apply and gives others confidence that the individual hired is qualified for the position. The assessment of applicants against these defined selection criteria allows for an objective and impartial staffing process. Provided

[1] The BCPSA's response to the Merit Commissioner's recommendations is contained in Appendix C.

the assessment process is reasonable and job-related, the audit determines whether the appointment was the result of a fair and reasonable merit-based assessment process (i.e., applicants were assessed consistently relative to the advertised selection criteria and all the factors of merit were considered).

Results

The 2010 Merit Performance Audit found that merit did not apply in one of the appointments audited as the assessment process did not consider all the factors of merit and did not meet the basic elements of a merit-based process. Two appointments were flagged "merit with exception" due to issues involving inconsistencies in the short-listing process. These three cases follow.

Case #5: Absence of Job Qualifications

In this case, where it was found that the assessment process lacked the basic elements of a merit-based process, there was no evidence (in the posting or job description) of the qualifications on which the assessment of applicants was to be based. The manager, when asked, indicated that the screening criteria were stated in the job posting; however, the posting contained only a general description of the duties. There was no indication that candidates' education and experience were considered during the assessment process; no evidence of marks or scores; and no notation to file to confirm if and how each candidate qualified. The interview questions and notes, while appearing to be related to the functions of the position, did not provide evidence to confirm how candidates performed as a result of the assessment. The manager indicated that the appointment decision was made based on the panel's conversation following the interviews. Evidence for the rationale to support the appointment decision was not provided. The absence of job qualifications resulted in an assessment process that did not consider all the factors of merit and did not meet the elements of being objective, reasonable, consistent, relevant and transparent. Additionally, as the selection criteria were not stated, it was impossible to determine whether the candidate appointed was qualified for the position.

Case #6: Short-listing Inconsistency – Courtesy Interviews

In this process, three applicants did not meet the advertised experience criteria but, according to the manager, were short-listed because they worked for the ministry. These three applicants passed the written test, were interviewed and one achieved the highest interview score (although was ultimately found not qualified on the basis of past work performance). In this case, some applicants who had comparable or stronger experience than the three previously referenced applicants were not considered and therefore were unfairly disadvantaged. While the audit found that the appointment was merit-based, the process was flagged with exception due to this inconsistent application of the qualifying criteria in the short-listing of applicants. Providing "courtesy" consideration to internal applicants who are not qualified favours internal candidates and compromises a merit-based process.

Case #7: Short-listing Inconsistency – Unsound Practice

The second of the two processes flagged "merit with exception" involved a short-listing practice that has been identified in past audits as problematic. Applicants were assessed against selection criteria characterized as knowledge, skills and/or abilities based only on a review of resumes. Short-listing candidates on the basis of their own representation of these qualifications is unsound in that it provides applicants with the opportunity to misrepresent themselves by embellishing or omitting information. Good practice limits the initial screening of applicants' qualifications to the stated education and experience requirements – applicants either meet these criteria or they do not. Applicants who are considered qualified on the basis of their education and experience would then be required to demonstrate the required knowledge, skills, abilities and competencies through further assessment (such as written tests and interviews).

In most cases, when evidence of this practice was encountered, it was confirmed that the criteria were intended and interpreted as experience requirements. In this case, however, the auditor determined that three of six criteria used to screen applicants could not reasonably be given such an

interpretation. Applicants who stated in their resume that they possessed a certain skill or ability were considered qualified with respect to that particular factor. For example, statements such as the following were accepted as the evidence necessary to short-list applicants: "I have excellent writing and analytical skills"; or "I take pride in my ability to work independently, organize and prioritize my workload and meet deadlines in a timely manner".

The auditor reviewed the short-listing decisions and determined that applicants who were short-listed through this process did meet the mandatory education and experience requirements for the position. With respect to the applicants who were not short-listed, however, one who met the education and experience criteria was eliminated from further consideration. As the appointment audited was not affected by this error, it was found to be merit-based, but the process was flagged with exception.

Assessment Methodologies

This year, as in previous years, managers used a variety of methods to assess candidates. It is generally accepted that multiple assessment methods add credibility and validity to the appointment process. In the majority of the appointment processes audited (58 per cent) multiple assessment methods such as questionnaires, written exams or assignments, oral presentations, and interviews were used before a selection decision was made. The remainder (42 per cent) used only an interview to assess candidates.

Behavioural Event Interviews

Many of the interview processes included an assessment of candidates' behavioural competencies through behavioural event interview (BEI) questioning. Almost one quarter of the assessment processes audited used a BEI exclusively.

Competency assessment information is available to applicants, employees and hiring managers through the BC Public Service Job Opportunities website and an employee intranet site. While panel members have access to this information, the audit observed many variations and some questionable usage of BEI techniques. Auditors also heard from hiring managers that they had not been trained and/or were uncomfortable or inexperienced in the use of this assessment methodology. The heavy use and reliance on

BEI to assess candidates, raises a concern for the Merit Commissioner that improper or inconsistent use may have a negative impact on merit-based hiring. A future study related to the use of this assessment methodology may be warranted.

Administrative Errors

As in previous years, auditors noted numerous minor calculation errors in scoring or in transcribing scores from individual score sheets to the summary rating guide. These errors did not affect the final outcome of competitions; but as scores determine the placement of candidates relative to one another, managers should ensure that care is taken to calculate scores accurately so as not to compromise the integrity of the assessment process.

Documentation

Managers are required to document hiring activities transparently, in part because those activities are subject to accountability review by the Merit Commissioner. Staffing decisions are business commitments and must be documented as thoroughly as financial decisions.

It must be evident that the steps taken and decisions made by a hiring manager throughout the recruitment and selection process uphold the merit principle and are consistent with the elements of transparency, consistency, relevance, fairness and reasonableness. Employees who request feedback (or higher-level review) on their performance in a competitive process expect managers at all levels to be able to account for their decisions and proper documentation ensures they are able to do so. An absence of supporting evidence for an applicant's results may impact on their perception of the fairness of the hiring process. Sometimes eligibility lists are used by other managers and a well-documented account of a hiring decision will add confidence that the initial competition results were merit-based and therefore valid for future appointments.

In 2009, the audit results indicated an improvement in documentation over past years; however, it was still found that in 5.3 per cent of the cases there were issues with the level of documented evidence to account for appointment decisions. As a result, the Merit Commissioner recommended clear responsibility be assigned for creating and maintaining appointment records. The BCPSA's response to this recommendation indicated that the Hiring Centre had taken on this responsibility and would be consolidating documentation at the end of each recruitment action to ensure a complete and accurate file, readily available for review.

Regrettably, the quality and completeness of documentation related to staffing decisions has remained a significant issue during the period covered by the 2010 Merit Performance Audit.

Results

Given the BCPSA's clear and confident position with respect to documentation, it was anticipated that there would be an improvement in the 2010 findings. However, "merit with exception" findings reflecting issues related to documentation comprised 7.7 per cent of appointments audited in 2010 under the new centralized hiring process: a figure which would have been much higher had the Office's staff not conducted extensive follow-up on missing documentation, or accepted verbal evidence as rationale for hiring decisions.

The majority of files with documentation issues either contained inadequate information or lacked information altogether related to short-listing decisions. This made it difficult to determine who was considered qualified for further assessment and who was not, and the basis for those decisions. Documentation at times showed short-listing recommendations made by the Hiring Centre but when some of these recommendations were not accepted by hiring managers, the final short-listing decisions were not documented and placed on the file.

Over the course of the audit the Office received a mix of paper and electronic files. Approximately half of the files received for audit were in electronic format, which were forwarded through or by the Hiring Centre. Most hard-copy records came directly from hiring managers or independent organizations. The audit of an appointment based entirely on an electronic file was a new process for the Office.

In the Hiring Centre's efforts to provide all competition files in an electronic format, hard-copy records received from hiring managers were scanned and supplemented with documents already stored in the recruitment system. Over half of the electronic files received were initially incomplete and required follow-up to obtain missing documentation such as the job posting, job description, applications and resumes, applicant information, and offer and regret letters. At times, scanned documents were unreadable. During the course of the audit the Office provided the Hiring Centre with ongoing feedback to address issues related to electronic files.

There was some evidence that not all documents on hard-copy files maintained by hiring managers were being scanned by the Hiring Centre and, therefore, the electronic records did not accurately reflect the hard-copy versions. The explanation provided for the vetting of documents was that only documents listed on the BCPSA's "Competition File Contents Checklist" were considered pertinent and others were considered "transitory" and therefore not necessary for the Merit Commissioner's review. The Merit Commissioner does not necessarily accept this position and is pursuing the matter with the Head of the BCPSA so that it may be resolved prior to the conclusion of the 2011 Merit Performance Audit.

Based on the Office's experience with this audit, it would seem that work remains to be done to enable the Hiring Centre to meet its objective to collect and store staffing documentation in such a manner that it is complete and readily available for review.

Recommendations with Respect to Documentation[1]

In view of the concerns and discussion above, the Merit Commissioner makes the following recommendations.

5. That if hard copy files are being scanned into electronic format, they be provided and scanned in their entirety.

6. That if the BCPSA believes there are particular categories of records that need not be retained because they are truly transitory and not relevant to the audit function of the Office; that the BCPSA identify, define and seek the concurrence of the Merit Commissioner.

Notification

Managers are required to notify employees who have applied for jobs about the outcome of the hiring process in part to ensure transparency in the conduct of public business. The failure to provide appropriate notification undermines confidence in the merit of the appointment and can lead to the perception that managers are not accountable for their hiring decisions. The absence of notification to unsuccessful employee applicants is considered an exception to a merit-based hiring process.

[1] The BCPSA's response to the Merit Commissioner's recommendations is contained in Appendix C.

In addition to the need for transparency, the notification process also serves to fulfill the requirement under sections 17 to 19 of the *Public Service Act* to give all employee applicants the right to challenge the merit of an appointment. Employees have the right to request and receive feedback from the hiring manager and if they consider that the appointment decision is not merit-based, they have a right to request an internal inquiry by the organization head. For positions in the bargaining unit, a further right to an independent review by the Merit Commissioner is available to them. This recourse procedure can only be initiated by the employee within prescribed timeframes once they receive notification of the appointment decision and, therefore, errors or omissions related to this final notification obstruct access to the statutory right to recourse.

The value of offering feedback and recourse extends beyond statutory requirements, regulations, policy or collective agreements; it is good management practice. By failing to notify, managers can miss the opportunity to provide employees with useful feedback and demonstrate leadership and accountability for their decisions. Demonstrating these elements of leadership is key to employee commitment and engagement, while failing to do so may damage the reputation of the BC Public Service as an employer.

The absence of notification to unsuccessful employee applicants was the most frequently found process error in the 2009 audit (8.3 per cent of cases), following which the Merit Commissioner recommended that the BCPSA provide corporate direction on when, and to whom, notification was to be given. The BCPSA responded by indicating all notification letters are maintained within the recruitment system, providing for consistent use of standardized letters.

Results

The 2010 audit found an absence of final notification to some or all of the unsuccessful employee applicants in 3.3 per cent of the appointments audited. While these appointments were found to be based on merit, the processes were flagged "merit with exception" due to this omission. In most cases where final notification was absent, applicants had been notified of their status during the course of the competition; however, this interim notification does not fulfill the requirement of notifying employee applicants of the final appointment decision.

Despite the overall improvement, the centralization and standardization of notification processes by the Hiring Centre has not addressed all issues. Ministries and organizations working independently from the Hiring Centre may not be aware of the requirement for final notification, signalling that work remains to be done by the BC Public Service to ensure that all managers are provided with information regarding their obligation under the *Act*.

The audit also noted issues of transparency and accuracy in notifying applicants of the competition results, which are not reflected in the above findings. In over one quarter of the files where some or all employee applicants received final notification, the results could have been more fully disclosed. For example, details were missing related to the appointment decision such as the name and classification of the employee proposed for appointment (a BCGEU collective agreement requirement); the establishment of an eligibility list, including the number of candidates on the list and the term of the list; and the number of offers extended. Being less than transparent in communicating results can lead employees to question the integrity of the staffing process or the integrity of the managers involved, and contribute to a level of distrust in the system.

The audit further noted that the standardized letters used to notify candidates of the competition results were not always applicable to the situation. For example: letters indicating that an organization was impressed with a candidate's skills were sent to candidates who actually failed to qualify; and letters advising applicants that there was an "overwhelming response" to a posting were sent when in fact it was not the case. Additionally, the audit noted cases where notification of final results was provided to individuals who had withdrawn from the competition. Accurately disclosing competition results is a simple way to reinforce confidence in the merit of staffing actions and engender trust in the integrity of the hiring system.

Recommendation with Respect to Notification[1]

In view of the preceding concerns and discussion, the Merit Commissioner makes the following recommendation.

7. That the necessary tools, resources and training be available and easily accessible to those responsible for the notification process to fulfill the obligation of appropriately advising and notifying unsuccessful employee applicants of the final competition results.

Past Work Performance

Under the *Public Service Act,* one of the factors that must be considered when determining merit is an individual's past work performance. In addition, BC Public Service hiring policy requires that a specific assessment of past work performance be conducted as part of the assessment process. Assessing an individual's past work performance is a critical element of the selection process and provides for an informed and quality hiring decision. It validates an assessment methodology that may have relied on self-reported information; provides additional evidence that the candidate meets the knowledge, skills, abilities and competencies required for the position; and confirms that the person is a match for the job. Although past work performance can be assessed in various ways, the policy requires that the assessment include employment references, one of which must be from a supervisor or equivalent. The auditors look for documented evidence that this factor of merit was considered, as required by statute and policy. Undertaking and accounting for this assessment is critical for all appointments but especially so for new hires into the BC Public Service.

Results

The audit found issue with the assessment of past work performance in three appointments audited (approximately two per cent of the appointments), all of which involved external (out-of-service) candidates. These appointments were found to be merit-based, but to highlight this area of risk the processes were flagged "merit with exception". These audits are described on the following page as Case #8 and Case #9.

[1] The BCPSA's response to the Merit Commissioner's recommendations is contained in Appendix C.

Case #8: Limited Assessment of Past Work Performance

This case involved the permanent appointment of a candidate from an eligibility list who was currently an auxiliary employee working in the position. Evidence indicated that due to an oversight, this candidate's past work performance was not assessed on the initial hire three months earlier and that, prior to making the permanent appointment, the hiring manager did not seek an external reference. While the candidate's performance as an auxiliary employee was taken into account, as it had only been a three-month period, an assessment of past work performance from a previous supervisor would have added significant value to the permanent appointment decision and additional confirmation that the candidate has the knowledge, skills, abilities and competencies required for the position.

Case #9: Missing Evidence of Past Work Performance

In this case, two of the appointments being audited, which were the result of the same competitive process, were new hires to the public service. The ministry contact indicated that reference checks were done but could not locate the documentation. The auditor also noted another candidate was disqualified from appointment on the basis of past work performance, but again the evidence was missing from the file.

The audit noted the assessment of past work performance was not documented in a further 10 per cent of the appointments. Each case involved the appointment of an internal employee candidate and the candidate's supervisor was a member of the selection panel so the auditors accepted verbal evidence that past work performance had been considered. There was evidence that hiring managers considered an assessment of past work performance was unnecessary as they had supervised the candidate in the past, or considered a reference check done for the employee's initial hire into the organization a few years earlier to be sufficient. In these cases, a more relevant assessment of past work performance would have been based on the employees' performance in their current position. Assessment of past work performance as it relates to the position being staffed is required as part of a proper selection process and documenting the results is required for transparency, accountability and credibility.

Years of Continuous Service

Under the *Public Service Act*, one of the six factors that must be considered when determining merit is an employee applicant's years of continuous service with the BC Public Service. Through the collective agreement with the BCGEU, the "qualified relatively equal" (QRE) calculation is the agreed-upon method of assessing candidates' years of continuous service when hiring for positions in the BCGEU. If, at the end of the assessment process the highest-rated qualified candidate does not have the most years of continuous service, a specific formula is applied to determine whether other qualified employee candidates are "relatively equal" to this candidate. The qualified candidate who is "relatively equal" with the most years of continuous service will then be offered the appointment. Where more than one vacancy is being filled, or an eligibility list is being established, other "relatively equal" candidates are ranked in order of their years of continuous service followed by the remaining qualified candidates in order of their point scores.

For excluded management positions and positions covered by the PEA and nurses' collective agreements, there is no requirement to assess years of continuous service. However, under the *Act* this factor of merit must still be considered. In previous years' audits of appointments to these groups where this factor has been assessed, a standard practice of assigning a 10 per cent weighting to continuous service has been observed. Should there be a decision to not assess continuous service, or a decision to assign a different weighting, these decisions should be documented.

Results

In the four-month 2010 audit, 75 per cent of the appointments audited were to positions included in the BCGEU, thus requiring a QRE calculation. Flaws or errors in the QRE calculation can impact whether a candidate is appointed, or affect candidates' placement order on an eligibility list for future hiring. The audit found that in 13 per cent of the appointments to BCGEU positions (18 appointments), the QRE calculation was either not done, or done incorrectly.

In three of these cases, as the error resulted in incorrect appointments, the appointments were found not to be merit-based. In 15 cases the audit found that the resulting appointments were not impacted, or there was minimal impact as a result. These

appointments were, therefore, found to be merit-based; but the appointment processes were flagged "merit with exception" as managers had either not known of their obligation to assess years of continuous service under the collective agreement, made incorrect calculations, or misinterpreted how the calculation was to be applied. For example, service as an auxiliary employee was not counted, service was considered for candidates who were unqualified, or points were added to scores rather than used to make a determination of "relatively equal".

In some cases, the panel made a decision not to calculate QRE as they expected to offer positions to all qualified candidates. The audit noted that although positions were offered to all the candidates who were found qualified, the positions were offered over a period of time thus disadvantaging some candidates.

The audit noted instances where there was no documented evidence that employees' years of continuous service were considered, and it appeared that candidates were ranked and made offers in order of their point scores. In these cases, the audit was able to reasonably conclude that this factor of merit was considered but was not documented (i.e., it was evident, without specifically calculating QRE, that the successful candidate's score was sufficiently ahead of other qualified employee candidates; or, the hiring manager stated that this factor was assessed and the results confirmed this). Documenting that this factor of merit was considered, however, would have added transparency and credibility to the process.

The assessment of years of continuous service for BCGEU positions has been a recurring issue identified in audits since 2007. The BCPSA responded to earlier recommendations by developing an electronic calculator and making it available on @Your Service, an employee intranet site. In 2009, due to continuing issues identified through the merit performance audit, the BCPSA took the additional step of centralizing responsibility for the calculation of QRE within the Hiring Centre.

Despite these measures, the 2010 audit results indicate a continuing issue; some managers remain unaware of the requirement to assess years of continuous service for BCGEU positions or how this is to be done. The percentage of BCGEU appointments audited where QRE was either not done, or done incorrectly, was 11.7 per cent in 2009; from September 1, 2010 to December 31, 2010 this figure was 13.1 per cent.

Recommendation with Respect to Years of Continuous Service[1]

In view of the preceding concerns and discussion, the Merit Commissioner makes the following recommendation.

8. That in hiring processes for positions in the BCGEU, measures be put in place to confirm that consideration has been given to the requirement for the "qualified relatively equal" calculation and, where required, that the calculation has been done correctly.

[1] The BCPSA's response to the Merit Commissioner's recommendations is contained in Appendix C.

Summary of Recommendations

The 2010 Merit Performance Audit results and the Merit Commissioner's preliminary comments and observations were provided to the Head of the BC Public Service Agency in May 2011, and a number of recommendations following the audit were provided in June 2011. The results highlight the two most prevalent issues: assessment of years of continuous service through the "qualified relatively equal" calculation; and documentation. Findings related to notification also remain one of the top three issues identified. The audit of appointments from the corporate hiring pools identified other important concerns.

The Merit Commissioner recognizes the major transformation that the BCPSA has undergone in its business processes over the previous year, and anticipates that the audit findings and recommendations will be used by the Agency to assist in refining and improving how the BC Public Service conducts its recruitment, selection and hiring processes and in attaining a staffing system that upholds the principles of merit.

Below is a summary of recommendations arising from this audit and attached at Appendix C is the BCPSA's response to these recommendations. The Merit Commissioner is pleased with their receptivity to implementing change and introducing improvements to the staffing system.

RECOMMENDATIONS WITH RESPECT TO APPOINTMENT PROCESS: CORPORATE HIRING POOLS

1. That in making referrals from the corporate hiring pools, offers of referral should be given to the most qualified applicants rather than be based on the date of a person's placement in the pool.

2. That when the corporate hiring pool is utilized, the BCPSA cease the practice of allowing candidates to be added from outside the hiring pool to the list of referrals from the pool.

3. That the BCPSA reconsider its position regarding who is an employee "applicant" and accept that any time a job is filled from the pool, all employee applicants to or within the pool who have not otherwise declared a lack of interest be notified of their rights under sections 17 to 19 of the *Act*.

4. That the BCPSA commit to ensuring that the Merit Commissioner will, for audit purposes, receive all information requested pertaining to all aspects of the corporate hiring pools.

RECOMMENDATIONS WITH RESPECT TO DOCUMENTATION

5. That if hard copy files are being scanned into electronic format, they be provided and scanned in their entirety.

6. That if the BCPSA believes there are particular categories of records that need not be retained because they are truly transitory and not relevant to the audit function of the Office; that the BCPSA identify, define and seek the concurrence of the Merit Commissioner.

RECOMMENDATION WITH RESPECT TO NOTIFICATION

7. That the necessary tools, resources and training be available and easily accessible to those responsible for the notification process to fulfill the obligation of appropriately advising and notifying unsuccessful employee applicants of the final competition results.

RECOMMENDATION WITH RESPECT TO YEARS OF CONTINUOUS SERVICE

8. That in hiring processes for positions in the BCGEU, measures be put in place to confirm that consideration has been given to the requirement for the "qualified relatively equal" calculation and, where required, that the calculation has been done correctly.

Special Audit of Auxiliary Appointments

OVERVIEW

Since its establishment in 2001, the Office of the Merit Commissioner has been systematically auditing various appointment types that are required by section 8 of the *Public Service Act* to be based on merit. The appointment of auxiliary employees, required by the *Act* to be based on merit but exempt from the requirement to hold a process (i.e., a competition) has not been previously examined.

BACKGROUND

Definition of Auxiliary

Auxiliary appointments are intended for work which is not of a continuous nature.

As defined by regulation, "For the purposes of the *Public Service Act*, "Auxiliary employee" means an employee who

(a) is specified under a collective agreement to be an auxiliary employee, or

(b) is not covered by a collective agreement and performs work by (i) substituting for another employee on maternity, parental, adoption or other extended leave or on assignment to a special project; or (ii) working on a special project or other work of limited duration."

The term is also similarly defined in the applicable collective agreements with the bargaining units – the BC Government and Service Employees' Union (BCGEU), the Professional Employees Association (PEA), and the Nurses' Union (BC Nurses' Union and Union of Psychiatric Nurses).

Auxiliary Conversions

The collective agreements for unionized employees provide for the conversion of an employee from auxiliary status to regular status. To be eligible for conversion, the employee must have worked 1827 hours (equivalent to one year full-time) in 33 pay periods (approximately 15 months) and have been employed for work which is of a continuous full-time or continuous part-time nature.

AUDIT OBJECTIVE

Appointments of auxiliary employees were examined to determine whether this appointment type was being used for its intended purpose (e.g., short-term, seasonal, or special programs). Evidence that auxiliary employees are continuing in the same position for extended periods of time may suggest an inappropriate use of this appointment option. Appointments to ongoing positions (i.e., permanent full-time or part-time, or longer-term temporary appointments) require the use of a merit-based recruitment and selection process under section 8(1) (b) of the *Act*. This study was intended to determine the level of risk associated with auxiliary appointments with respect to the application of merit under the *Act*.

SCOPE AND APPROACH

Ministries and organizations subject to audit are those that make appointments under the authority of section 8 of the *Act*. Appointment data was provided in October 2010 by the BC Public Service Agency (BCPSA) and consisted of all records of employees coded in the Corporate Human Resource Information and Payroll System (CHIPS) as "auxiliary" and "active" on September 30, 2010. Three organizations which do not enter their appointment information in CHIPS – the Liquor Distribution Branch, Forensic Psychiatric and Riverview Hospitals (BC Mental Health and Addiction Services) – were excluded from study in this special audit.

The audit consisted of an examination of appointment data. Certain categories of appointments were excluded from further consideration, which resulted in a final group of auxiliary appointments which were considered to be of interest. A discussion of the filtering process follows. For context, CHIPS records of auxiliary conversions were also examined.

ANALYSIS AND OBSERVATIONS

Filtering Process to Establish Population of Interest

As of September 30, 2010 there were 3,106 auxiliaries on record, consisting of 1,887 active auxiliaries and 1,129 auxiliaries on layoff. Those auxiliaries on layoff were not considered to be within the area of study and were therefore excluded from further consideration. Of the 1,887 active auxiliaries, 389 (20.6 per cent) were coded in CHIPS as seasonal appointments such as fire protection assistants and park rangers, and 87 (4.6 per cent) were coded as special programs (i.e., Co-op, Aboriginal Youth Intern Program, Public Service Internship, or Youth Employment Program). As both these categories of auxiliaries clearly met the definition of "auxiliary" they were also excluded from further consideration.

Of the remaining 1,411 active auxiliaries, 868 (46 per cent) were currently in appointment terms of 12 months or less. As it appeared that these auxiliary assignments were being used for their intended purpose of filling a short-term need, they were excluded from further consideration. The remaining 543 auxiliaries (28.8 per cent of all active auxiliaries) were in appointments that had continued for more than 12 months and, due to the length of their term, were the focus of further analysis.

Of the 543 longer-term auxiliary appointments analyzed, 343 (63 per cent) reflected auxiliary employees without an established schedule who worked on an "as and when" required basis, and who had not worked the equivalent of one year full-time within the last 15 months. These cases appeared to have met the intended purpose of an auxiliary appointment and were therefore excluded from further consideration. This filtering process resulted in a final population of interest of 200 appointments, as shown in Chart 3.

Chart 3: Filtering Process

3,106 Total Auxiliaries*
1,129 On Layoff
1,887 Active
389 Seasonal
1,411 Other
87 Special Programs
868 in appointments of 12 months or less
543 in appointments of more than 12 months
343 "as and when" appointments less than full-time equivalent
200 appointments of interest: longer-term auxiliaries

*As at September 30, 2010

Conversions to Regular Status within the Population of Interest

Of the appointments in the population of interest, 16 of the 200 auxiliary employees were converted to regular status in the four months following the data collection date. It is reasonable to expect that there may be further conversions of the employees in this group as specific criteria must be met before an employee is eligible for conversion, and historically many conversions occur from one to five years retroactively.

A significant number of auxiliary appointments continue to the point where the employee is converted to regular status. Put into context, from 2004 to 2009 these conversions have comprised from five to 12 per cent of all permanent appointments to, or conversions within, the regular workforce each year. There appears, however, to be a downward trend in this regard, with conversions representing only five per cent of all permanent appointments or conversions in both 2008 and 2009.

Although the conversion of an employee from auxiliary status to regular status is a legitimate process through collective agreement provisions, the conversion process is provided as a protective measure for the employee. Making an auxiliary appointment as a quick fix to staff a position because there is no requirement to hold a competitive process, when information available at the time indicates the possibility that the position may be ongoing, can be interpreted as short-sighted. Such cases may be viewed as bypassing the normal requirements under section 8(1) (b) of the *Act* for a merit-based recruitment and selection process. Based on an examination of CHIPS data alone, however, it is not possible to make this determination.

Observations

The 200 longer-term auxiliary appointments forming the population of interest represent 10.6 per cent of all active auxiliaries on the September 30, 2010 data collection date. Following are observations with respect to these 200 appointments:

- 50 per cent of the appointments do not have an appointment end date in CHIPS and the vast majority of these open-ended appointments have never been extended;
- 15 per cent of the appointments have been extended once, 33 per cent have been extended two to five times, and 11 per cent have been repeatedly extended, up to 16 times;

- 87.5 per cent of the appointments are to positions in the BCGEU, 9.5 per cent are excluded, 2.5 per cent are nurses and 0.5 per cent are PEA;
- 65.5 per cent of the appointments are characterized in CHIPS as "as and when" auxiliaries, 27.5 per cent are scheduled to work full-time, and the remaining seven per cent are scheduled to work part-time established hours; and
- the greatest numbers of these appointments are clerical positions (23 per cent), followed by healthcare workers (15 per cent) and correctional services positions (13.5 per cent).

RESULTS

The 200 appointments that formed the population of interest signal four areas where there is potential risk to merit-based hiring. Each of the appointments in the population of interest reflects an auxiliary employee who worked in one specific position, and continued to do so without any layoffs, for periods of time ranging from more than one year to more than 25 years. Specifically, these auxiliary employees:

- worked the equivalent of full-time hours for 12 months or more, immediately prior to September 30, 2010;
- worked the equivalent of one day or more per week for the three years prior to September 30, 2010, although not necessarily following a standard work schedule;
- had established, standard hours of work, whether part-time or full-time; and/or
- are designated "as and when" but may have worked a significant number of hours on an ongoing basis.

Although some of the cases identified may have been the result of a merit-based process, this was not a requirement under the *Act* as they are auxiliary appointments. These long-term appointments have been highlighted, however, as areas of potential risk to merit-based hiring. Table 6 provides a breakdown by length of assignment.

Table 6: Appointments by Assignment Length	
Assignment Length as at September 30, 2010	**Number**
> 25 years	1
> 15 years to 25 years	0
> 10 years to 15 years	2
> 5 years to 10 years	36
> 2 years to 5 years	88
> 1 year to 2 years	73
Total	**200**

CONCLUSION

Based on the areas of potential risk identified through this audit, the Merit Commissioner has noted a concern with the use of the auxiliary appointment type to perform longer-term work. In some cases the work could conceivably be viewed as continuous in nature, and thus the appointment should have been the result of a merit-based process under the *Act*. The use of an inappropriate staffing option could be viewed as a means of circumventing the requirement for a competitive process designed to select the most qualified individual to become part of the long-term workforce. Further exploration of historical appointment records would be required to determine whether these auxiliaries were appointed through merit-based processes or not.

The Merit Commissioner provided the findings and observations from this audit to the BCPSA to allow them the opportunity to offer any insights, or provide details of procedures that may be in place to guard against the inappropriate use of the auxiliary appointment type. The Office will take into consideration any information that the BCPSA may provide, and will continue to periodically monitor auxiliary appointment data.

Special Study of Lateral Transfers

OVERVIEW

Appointments that are permanent, or temporary exceeding seven months, are required under section 8(1) of the *Public Service Act* to be based on the principle of merit and be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants. Exempted from these requirements are appointments through lateral transfer, as authorized under section 10 of the *Act*. A lateral transfer, which does not occur through a competitive process, refers to the movement of an employee to a position with the same maximum salary as their base position.

The audit population for the Office of the Merit Commissioner's merit performance audits of hiring and promotions is drawn from the Corporate Human Resource Information and Payroll System (CHIPS) and relies on CHIPS appointment coding to identify the appropriate population. Appointments coded as "lateral transfer" are specifically excluded from merit performance audits. In previous years, numerous appointments identified for audit and found to fall outside the scope of the audit due to CHIPS coding errors, were confirmed to be lateral transfers. The prevalence of coding errors signalled the possibility that some appointments were being incorrectly coded as lateral transfers and, as a result, not being identified for audit.

OBJECTIVE

The purpose of this study was to determine the extent to which appointments coded in CHIPS as lateral transfers were in fact other appointment types. Appointments of interest included those that were recorded as lateral moves but which were, in fact, promotions. The incorrect characterization of such appointments (intentional or not) as lateral transfers has the effect of excluding these appointments from oversight by the Office, hence the identified potential risk.

APPOINTMENT AND SAMPLE DETAILS

The appointment population was provided by the BC Public Service Agency (BCPSA) and consisted of data drawn from CHIPS for the period January 1, 2010 to August 31, 2010. There were 996 appointments coded as "lateral transfer".

FINDINGS

Each employee's appointment record in CHIPS was examined to determine the nature of the appointment and it was found that:

- 922 (92.6 per cent) appointments were correctly identified as "lateral transfer". Of these, 18 records initially appeared to be promotions due to data discrepancies related to downward reclassification of the previous base position, a same-day pay increase, salary protection, etc., but on further examination were determined to be lateral transfers;
- 66 (6.6 per cent) appointments were in fact "demotions" (lower maximum salary than the employee's base position) which are also exempted from the process requirements of the *Act*; and
- eight (0.8 per cent) appointments appeared to be promotions and would require further investigation or discussion with the ministry to confirm the actual appointment type.

CONCLUSION

This study determined that only 0.8 per cent of the appointments coded as "lateral transfer" (eight of 996 appointments) may have been incorrectly coded promotions. As this is not considered to represent a significant area of risk to merit-based hiring, the Merit Commissioner determined that further investigation through a special audit was not warranted. The Office will maintain an ongoing watch on this area of potential risk through periodic analysis of lateral transfer appointment data.

The BCPSA was provided with the results of the study, to allow any follow-up action considered appropriate.

OVERVIEW

Staffing Review Process

Since December 2003, Part 4 of the *Public Service Act* has given employees who are unsuccessful applicants in a competition the right to request a review of a hiring or promotion decision. The request must be based on the grounds that the appointment did not comply with the test of merit (i.e., the successful individual was qualified for the job and the selection process was merit-based).

The staffing review process consists of three steps, which begins with the employee requesting feedback from the hiring manager on their performance during the staffing process and why they were unsuccessful. If unsatisfied, the employee may then request an inquiry by the deputy minister into the application of the principle of merit.

For employees who are applying for an excluded position, the deputy minister's decision is final but for employees who are applicants to bargaining-unit positions, there is further recourse available: an independent review by the Merit Commissioner. The Merit Commissioner's review involves discussions with the employee who requests the review and an analysis of all documentation related to the staffing process in question. The Merit Commissioner may request any additional information considered relevant, including verbal evidence to support the documentation. Discussions often occur with the manager responsible for the appointment decision, or with others involved in the assessment process. These discussions enable the Merit Commissioner to identify issues and establish facts. After completing this analysis, the Merit Commissioner may find that the appointment in question was merit-based or may direct that the deputy minister reconsider the appointment or proposed appointment. The Merit Commissioner's decision is final and binding.

Grounds for Requests for Review

Employee applicants request an independent review of a hiring or promotion decision because they believe that the appointment was not merit-based. The Merit Commissioner's review is guided by the requirements of legislation, hiring policy and collective agreement

provisions that are related to merit-based hiring. The review is not intended to be a substitute for the judgment of the hiring manager but to determine whether the assessment of candidates was based on the factors relevant to the work to be performed; whether the process, including steps and decisions made, was fair, consistent, transparent, reasonable, and objective; and whether all factors of merit were considered.

DECISIONS

Results

During the 2010/2011 fiscal year, the Merit Commissioner received 11 individual requests for review. Four requests were deemed ineligible: three were outside the prescribed timelines for review and one was in regard to an appointment through lateral transfer, and therefore exempt from the requirement for merit under section 8 of the *Act*.

Decisions with respect to the seven eligible requests were issued by the Merit Commissioner within approximately 30 days of receipt. All of the competitions at issue were restricted to in-service applicants; most were also restricted to the ministry and in some cases further restrictions within the ministry were imposed. Three of the requests were received from different employees regarding the same competition, which was restricted to a work unit within the ministry. In six cases, the Merit Commissioner found the appointments were the result of a merit-based process and the individuals appointed were qualified for the job. In one case, the Merit Commissioner found that although the individual appointed was qualified for the job, the appointment was not the result of a merit-based process and directed the deputy minister to reconsider the appointment.

a) Inconsistencies in Process

Five of the review requests included grounds related to inconsistencies in the assessment of applicants, which the employees believed resulted in an unfair process. Applicants' concerns included the perception that some applicants may have been advantaged by clarification they received during a written test, and that interview scoring was conducted in an arbitrary and inconsistent manner. It is understandable that an applicant may consider a staffing process unfair if they are not provided the same treatment as others during that process. Fair treatment, however, does not mean that the process must be exactly the same for each applicant.

The reviews examined the variations between applicants in each selection process and, in one competition, identified inconsistencies in the short-listing assessment of applicants against the mandatory education and experience criteria. Some applicants who were short-listed did not demonstrate that they met the selection criteria whereas others who appeared to meet the criteria were not short-listed. In this case, the Merit Commissioner directed that the appointment decision be reconsidered.

In the other cases, the reviews found no evidence that any applicants were advantaged or disadvantaged as a result of variations between candidates in the assessment process. Nonetheless, employee perceptions that an appointment on merit was compromised, underscores the need for clear and open communication to staff regarding hiring practices and all aspects of the hiring process.

b) Competency-based Behavioural Event Interviews

Three of the requests for review included grounds related to the use of competency-based interviews. In two cases, an unsuccessful employee questioned the merit of the interview process which assessed only competencies and didn't adequately consider some other factors of merit, such as knowledge, skills and abilities. In both these reviews the Merit Commissioner found the factors of merit were properly considered through a staged assessment process, where candidates were eliminated from further assessment once they were determined not to have met the required qualifications. In another case, the review noted some process flaws in the scoring of competency questions but confirmed that these did not affect the competition outcome. Nonetheless, the evidence suggests that in some cases panels may not have had a complete understanding of the appropriate method of using behavioural event interviews to assess competencies. The Merit Commissioner will be taking these and similar employee concerns into consideration in establishing the focus of future special audits and studies.

c) Assessing Years of Continuous Service

The consideration of years of continuous service through the "Qualified Relatively Equal" calculation is an assessment that is required for employees applying to a bargaining unit position. This assessment is largely invisible to candidates in a competition. Two of the reviews identified concerns related to this assessment. In one case, the review noted that there was no evidence to indicate this assessment was undertaken; however, based on the candidate appointed, it was possible to determine that in fact this factor of merit had been correctly assessed. In another case, there was evidence that candidates' years of continuous service were not initially assessed, but the panel became aware of the oversight and rectified the matter prior to extending a formal offer. Flaws and oversights such as these affect the integrity and credibility of the overall process.

d) Perceived Bias

One of the reviews included allegations of perceived bias. In this case the employee had raised a concern that one of the panel members was biased due to a previous workplace conflict. The circumstances of the competition were examined and the review found no evidence of bias against any candidate, but noted that greater transparency and communication throughout the competition process might have alleviated the employee's concern.

DELAYS IN INTERNAL REVIEW

Two of the seven requests for review in 2010/2011 were preceded by significant delays in the completion of the inquiry at the deputy minister level: one inquiry took over three months and the other over seven months. This issue around timeliness is ongoing and was also noted in the Merit Commissioner's 2009/2010 Annual Report. There are strict five-day time limits imposed on employees when requesting feedback, an internal inquiry, or a review. As well, hiring managers are required under the *Public Service Act* to provide feedback "as soon as practicable". Although there are no timelines prescribed for a deputy minister to conduct an inquiry, lengthy delays such as those observed are not reasonable and bring into question the fairness of the process.

A timely decision at each stage of the review process is important; both for the organization's operational requirements and for the employees involved who may be affected by the outcome.

FREQUENCY OF REQUESTS FOR REVIEW BY THE MERIT COMMISSIONER

The number of requests for review received by the Merit Commissioner has remained relatively constant from 2006/2007 to 2010/2011. The percentage of those requests that are ineligible for review has increased from seven per cent in 2006/07 to 36 per cent in 2010/11. Table 7 provides further detail.

Table 7: Year-to-Year Comparison of Staffing Reviews

Fiscal Year	2006 – 2007	2007 – 2008	2008 – 2009	2009 – 2010	2010 – 2011
Requests for review received	15	11	15	6	11
Requests for review outstanding from previous fiscal year	4	-	-	-	-
Requests for review ineligible or withdrawn	1	1	4	2	4
Total eligible requests for review[1]	**18**	**10**	**11**	**4**	**7**
Appointments complying with merit	17	10	11	4	6
Appointments not complying with merit	1	-	-	-	1

[1] Decisions issued may reflect requests for review from employees on multiple competitions and/or on competitions involving a request for review from more than one employee.

ACCESS TO RIGHT OF RECOURSE

It is difficult to make a statement as to whether the current number of requests for review received by the Merit Commissioner is within what would be considered "healthy" for an organization the size of the BC Public Service. Comment has been made in previous annual reports with respect to the decline in numbers of requests received, and also the disconnect between the relatively low number of complaints and the level of confidence in merit-based

hiring as expressed through the BC Public Service's Work Environment Survey. It is probably safe to conclude, however, that the number of requests received is less important than the need to ensure that appropriate avenues of recourse are available and accessible to those who have entitlement to such redress. Unsuccessful employee applicants must, in all cases, be provided with final notification of competition results as well as easily accessible and detailed information concerning the review process.

As noted earlier, there are strict five-day time limits imposed on employees at each stage of the review process as currently prescribed by regulation. The Merit Commissioner is concerned that the five calendar-day period may be overly restrictive in that it may not allow a reasonable time period for unsuccessful employee applicants to digest the results they have been provided, in some cases seek out information on the review process, formulate their grounds, and prepare and submit a written request. It is recognized that applicants and hiring panels often have a shared interest in concluding job competitions as soon as feasible; nonetheless, a reasonable period for feedback and review is essential.

Another concern regarding access to recourse which has been noted by the Merit Commissioner relates to employees whose status changes to a non-employee during the course of a competition (e.g., through resignation or termination). Currently, eligibility for recourse is based on the BCPSA's interpretation that an individual must be an employee (or an employee on layoff provided their seniority has not been lost) at the time feedback is requested, in order to be eligible for review.

The Office will undertake further study of these issues.

RECOMMENDATIONS

Through the course of conducting audits and reviews, as well as discussions with stakeholders, the Office has identified a number of factors that may impact employee access to recourse. This led to three recommendations, which were contained in the 2009/2010 Annual Report. These recommendations have not yet been fully addressed by the BCPSA.

In 2009/2010 the Merit Commissioner noted a transparency issue regarding the absence of information available to employees about the staffing review process, and made three recommendations to address the identified concerns. These recommendations have been restated below, followed by comments concerning responses received from the BCPSA to date.

In 2009/2010 it was recommended that the BCPSA provide employees with detailed information about their right to request a review of a staffing decision, including process steps and associated timelines, and that this information should, at least, be made available on the BC Public Service intranet in an easily accessed location. It was also recommended that a link to the Office of the Merit Commissioner's website be added.

The Merit Commissioner noted that although the BCPSA has taken some steps to address this recommendation, the information provided is not easily accessible and there is no search capability to assist employees to find the information. Further, while the information provided is useful, some basic details regarding the review process, procedural steps, and how and where to send the request, are not available. Clearly further steps must be taken to address this particular transparency issue.

The Merit Commissioner also made a recommendation in 2009/2010 that deputy ministers and organization heads ensure their organizational culture is demonstrably supportive of an employee's right of review. There continue to be indicators of underlying issues or problems that may need to be addressed, such as employees' lack of awareness, concerns with respect to reprisal, or perceived futility of pursuing a request for review. In recognition of the time required for a cultural shift to occur, the Merit Commissioner will follow up on this recommendation in due course.

The Merit Commissioner's third staffing review recommendation in 2009/2010 was that the BCPSA establish a process to collect information concerning all requests for internal inquiry received by organization heads and all responses issued, and make this information available to the Merit Commissioner.

The BCPSA provided the Merit Commissioner with a report of internal inquiry requests received by organization heads in the 2010/11 fiscal year. Information was also requested

directly by the Office from those organizations which do not receive services from the BCPSA. Based on the combined results, it is noted that approximately half of the reported requests for an internal inquiry were followed by a request for review by the Merit Commissioner. Of the 13 eligible internal inquiries reported in the fiscal year, ten appointment decisions were upheld and three competitions were cancelled. However, the overall number of requests made through Step 2 and Step 3 of the staffing review process is still very small in relation to the number of appointments in the BC Public Service during the same time period.

Once the Merit Commissioner's recommendations regarding underlying transparency issues are addressed, further study may be required if there are indicators that employees have a concern with respect to reprisal in accessing the review process.

Budget and Operations

On November 23, 2010, the Merit Commissioner met with the Select Standing Committee on Finance and Government Services to review results of the work of the Office over the previous year, to establish priorities for the year ahead, and to review budget requirements for the next three fiscal years. The Committee considered the Commissioner's estimates to be reasonable and credible and recommended approval of the proposed budget.

BUDGET AND EXPENDITURES 2010/2011

The Office of the Merit Commissioner's approved operating budget and expenditures for the 2010/2011 fiscal year are shown by expenditure type in Chart 4. Total expenditures were approximately $81,000 or 8.5 per cent under budget.

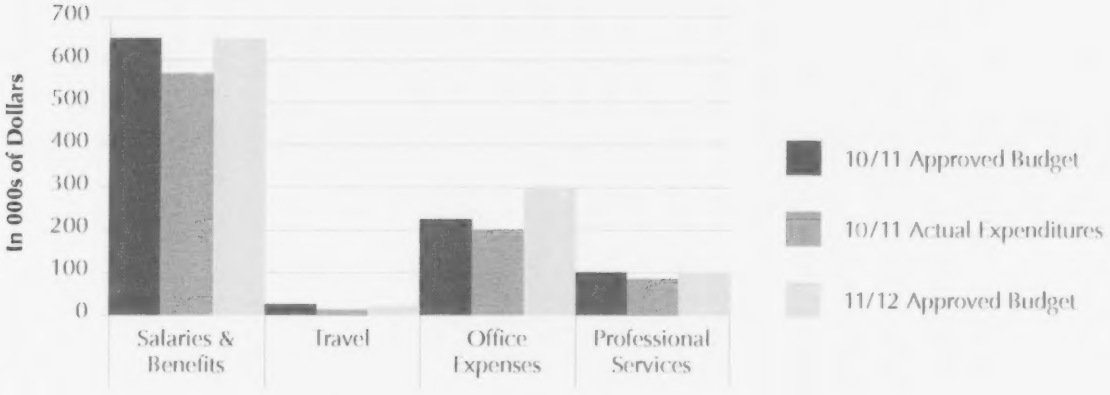
SERVICE PLAN 2011/2012 TO 2013/2014

The Service Plan for the Office of the Merit Commissioner outlined future challenges and priorities for the coming years. Specifically, it addressed plans for an audit of appointments made during the 2011 calendar year; audits of temporary appointments and auxiliary appointments; and special studies related to staffing reviews and merit-based hiring within specific ministries.

BUDGET 2011/2012

The Merit Commissioner's proposal to the Finance Committee did not include any requests for additional funds, apart from what had already been considered and approved to allow for increased building occupancy costs in new shared accommodation, and the amortization of tenant improvement costs associated with that move. As a result, the Committee approved an operating budget for the Office in the amount of $1,062,000 for fiscal year 2011/2012, details of which are also contained in Chart 4.

Chart 4: Operating Budget and Expenditures 2010/2011 and Approved Operating Budget 2011/2012



Resources

Staff

Dodie Barber
Manager, Audits and Reviews

Lynn Kingham
Performance Auditor

Jill Inget
Performance Auditor

Lorina Miklenic
Administrative Assistant

Contracted Auditors

Reg Effa
Cathy Leahy
Bruce McLennan
Judi Pringle
Norma Quinn

Audit Advisory Committee

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APPENDIX A

Organizations Subject to Oversight by the Merit Commissioner Include:

MINISTRIES (as at March 14, 2011)

Aboriginal Relations and Reconciliation
Advanced Education
Agriculture
Attorney General
Children and Family Development
Community, Sport and Cultural Development
Education
Energy and Mines
Environment
Finance
Forests, Lands and Natural Resource Operations
Health
Jobs, Tourism and Innovation
Labour, Citizens' Services and Open Government
Office of the Premier and Cabinet Office
Public Safety and Solicitor General
Social Development
Transportation and Infrastructure

AGENCIES, BOARDS AND COMMISSIONS

BC Pension Corporation
BC Public Service Agency
Broadmead Care Society
Employment and Assistance Appeal Tribunal of BC
Environmental Appeal Board
Financial Institutions Commission
Forensic Psychiatric Hospital and Riverview Hospital (BC Mental Health and Addiction Services)
Forest Appeals Commission
Forest Practices Board
Islands Trust
Oak Bay Lodge Continuing Care Society
Provincial Capital Commission
Public Sector Employers' Council
Royal BC Museum

INDEPENDENT OFFICES

Auditor General
Elections BC
Information and Privacy Commissioner
Merit Commissioner
Ombudsperson
Police Complaint Commissioner
Representative for Children and Youth

APPENDIX B

Report Prepared by BC Stats: "Random Selection for the 2010 Merit Performance Audit"

RANDOM SELECTION FOR THE 2010 MERIT PERFORMANCE AUDIT

Prepared for the Office of the Merit Commissioner

June 2011

BRITISH COLUMBIA
The Best Place on Earth

BCStats

CONTACT INFORMATION

If you have any questions about the information in this report, please email taylor.saunders@gov.bc.ca or phone 250-387-8972.

BACKGROUND

The Office of the Merit Commissioner was established by legislation in August 2001. Under this legislation, the Merit Commissioner is responsible for performing audits of public service appointments, as part of a program of monitoring the application of the merit principle under section 8 of the *Public Service Act*. The results of the audits are reported to the heads of ministries and other organizations. In aggregate, the results are also communicated to the Legislative Assembly as part of the annual report of the Commissioner.

The audits are designed to assess whether recruitment and selection practices have resulted in appointments based on merit, and whether individuals possess the required qualifications for the position to which they were appointed. This requires a close study of the details of each appointment by an expert in staffing processes.

To support the audit process, BC Stats developed a sampling solution to ensure that the cases selected for the audit were both random and representative. This paper describes the appointments that occurred within the 2010 calendar year, and explains the method that was used to make an audit selection from these appointments.

Between 2001 and 2005, the resources available for auditing were limited and the number of appointments audited were constrained accordingly. With the 2006 appointment of the first Merit Commissioner as an independent Officer of the Legislature, the annual audit increased in size. The sample rate was increased such that it was robust enough to generalize the audit results to the population of appointments with greater certainty. The increase in the sampling rate was maintained for both the 2007 and 2009 audit years. Focusing on the 2010 audit, 183 appointments were audited from an adjusted population of 942 appointments.[1]

Table 1(a) summarizes the in-scope population and sample counts across audit years *prior* to the establishment of the Office of the Merit Commissioner as an independent office.

Table 1(a): Year-Over-Year Comparison of In-Scope Population and Sample Counts

Year	Number of Appointments	Number of Audits	Sampling Rate
2001	1,481	39	2.6%
2002	1,835	30	1.6%
2003	2,772	40	1.4%
2004	2,904	39	1.3%
2005	2,871	70	2.4%

[1] See "Random Selection of Cases" for a full discussion of the number of appointments originally put forward for audit. A certain proportion, upon review, was deemed out of scope and this proportion was then estimated back into the original population.

Table 1(b) summarizes the in-scope population and sample counts across audit years *following* the establishment of the Office of the Merit Commissioner as an independent office.

Table 1(b): Year-Over-Year Comparison of In-Scope Population and Sample Counts

Year	Number of Appointments	Number of Audits	Sampling Rate
2006	3,754	308	8.2%
2007	5,508	531	9.6%
2008[1]	n/a	n/a	n/a
2009	2,429	302	12.4%
2010[2]	942	183	19.4%

[1] An audit was not conducted in 2008 and, as a result, a count of appointments occurring within the 2008 calendar year was not obtained for this study.
[2] The 2010 audit was a partial year audit, covering appointments from September 1, 2010 to December 31, 2010.

2010 APPOINTMENT DEMOGRAPHICS

The Office of the Merit Commissioner defined the population of appointments for the 2010 audit according to two key factors: the type of appointment and the timeframe in which the appointment occurred. The 2010 audit timeframe was September 1, 2010 to December 31, 2010, rather than a full calendar year. The type of appointment to be audited included direct appointments, permanent appointments and temporary appointments for more than seven months. The remaining appointments within the Merit Commissioner's jurisdiction of appointments made under section 8 of the *Public Service Act* (i.e., auxiliary appointments and temporary appointments of seven months or less), were excluded from the audit population. Based on these query parameters, a final population of 1048 appointments was identified.

A high level demographic and geographic analysis indicated that appointments occurring in the 2010 calendar year tended to cluster around a relatively small number of occupations, organizations and geographies.

With respect to the occupational results, of the job classifications within the 2010 audit population, four were found to comprise over one-third (34%) of the total population of 1,048 appointments. Similar to the 2007 and 2009 audit populations, the job classifications with the highest incident in 2010 was "Business Leadership" with 121 appointments. A summary of the top four job classifications for 2010 is provided in Table 2.

Table 2: Top Four Job Classifications by Number of Appointments

Job Description	Number of Appointments	Percentage of All Appointments
Business Leadership	121	11.5%
Comm Prog Off-Growth R15 EAW	84	8.0%
Applied Leadership	75	7.2%
Clerk R9	72	6.9%

At the organization or ministry level, the frequency of appointments was higher for those organizations with larger populations. In combination, the five organizations with the largest number of appointments collectively accounted for over half (56%) of the total number of appointments in 2010. Table 3 provides a summary of the top five organizations' results.

Table 3: Top Five Organizations* by Number of Appointments

Ministry	Number of Appointments	Percentage of All Appointments
Housing and Social Development	169	16.1%
Children & Family Development	145	13.8%
Attorney General	132	12.6%
Public Safety & Solicitor General	82	7.8%
Health Services	59	5.6%

* Ministries in effect at the time of the appointment.

Looking at the appointment population on a geographic level revealed that just less than half (47%) of the appointments are in Victoria, with just over half of the remaining appointments in the Greater Vancouver Regional District (GVRD) and the rest of the province (30% and 23%, respectively). A breakdown of these results can be found in Table 4.

Table 4: Broad Geographies by Number of Appointments

City	Number of Appointments	Percentage of All Appointments
Victoria	496	47.3%
GVRD	312	29.8%
Other	240	22.9%

RANDOM SELECTION OF CASES

The objective of the Office of the Merit Commissioner's merit performance audit is to randomly sample all permanent new hires and promotions, and temporary appointments greater than seven months, in order to obtain an unbiased picture of the application of the merit principle under the *Public Service Act*. However, while a random sample offers a generally unbiased representation of an overall population, the sample's representativeness for specific groups within the population may be limited due to constraints imposed by the size of the population and the sample. For this reason, the population was stratified prior to sample selection to ensure adequate representation in the final sample. The data stratification process is described later in this report.

The 2010 audit introduced several additional considerations to the sampling plan so as to better support the operational requirements of the audit. The samples for the 2010 audit were selected at two month intervals. It should be noted though, that the overall scope of the 2010 audit was limited to a four-month timeframe, beginning on September 1, 2010 and concluding on December 31, 2010. One final consideration is that appointments within the Liquor Distribution Branch (LDB) and Forensic Psychiatric and Riverview Hospitals (BC Mental Health and Addiction Services) were each sampled once from their own source data, for appointments that took place between September 1, 2010 and December 31, 2010.

In addition to the timing of the sampling process, one further operational requirement led to a sampling approach that diverged from previous audit years. Specifically, appointments for positions that were broadly identified as administrative in scope were sampled at a higher rate than for positions that were not administrative. As administrative appointments typically have a lower incidence in the population than non-administrative appointments, the over-sample was performed so that results from the two groups could be more readily contrasted. The resulting sampling rate for administrative appointments was 30%, whereas for non-administrative appointments a rate of 15% was maintained.

For each sampling window, a cumulative list of appointments made from September 1, 2010 to the date of the pull, was provided to BC Stats. The list was filtered to distinguish appointments that had already appeared in any previous sampling window. In addition to identifying new appointments, the filtering process was also used to identify unique appointments for employees with multiple entries in the cumulative list. This filtering process provided a final population of appointments from which independent samples could be drawn.

In total, four samples were drawn for the 2010 audit. A summary of the four sampling windows and their associated sampling rates are provided in Table 5.

Table 5: 2010 Sampling and Population Characteristics

Organizations	Sampling Window	Occupation Group	Population	Sample Size	Systematic Sampling Rate*	Actual Sample Rate
BC Public Service	Sept - Oct 31	Non-admin Staff	390	63	15%	16%
		Admin Staff	110	39	30%	35%
	Nov 1 - Dec 1	Non-admin Staff	372	60	15%	16%
		Admin Staff	127	35	30%	28%
Liquor Distribution Branch	Sept 1 - Dec 31	All Staff	33	6	15%	18%
Forensic Psychiatric & Riverview Hospitals	Sept 1 - Dec 31	All Staff	16	3	15%	19%
TOTAL			**1048**	**206**	-	-

*The systematic sampling rate represents the initial rate at which sample points were drawn from a sample window. As none of the population sizes were evenly divisible by their respective systematic sample rate, in addition to the influence of random start counts, the actual sampling rates slightly differed from the systematic rates.

Based on the sampling plan summarized in Table 5, a final sample size of 206 appointments was drawn from the total population of 1,048 appointments.

As in previous years, three key categories were selected to stratify the data, based on their relative importance. Using a set of category definitions similar to those used in previous annual audits, the 2010 appointments were stratified by their bargaining unit status and appointment type. Due to the statistical complexities[2] arising from an overly stratified sample, a previously-used ministry/organization *type* stratum was replaced in favour of a ministry/organization *size* stratum for the 2009 audit. The three categories chosen for 2009, and again in 2010, were defined as follows:

- Ministry/organization size - Smaller than 200 employees, 200 to 499 employees, 500 to 1000 employees, larger than 1000 employees;
- Appointment type - Permanent appointment, temporary appointment of more than seven months, direct appointment; and
- Bargaining unit status – Included, excluded.

[2] The ministry/organization *type* stratification used prior to the 2009 audit presented two concerns. Firstly, to account for the possibility of organizational restructuring, an ongoing sampling plan stratified by individual organizations was determined to be unfeasible (i.e., samples drawn before and after the restructuring would have limited comparability). Secondly, as high levels of stratification can lead to inflated standard error estimates, this would be particularly problematic given the low incidence of certain merit findings. With over 30 organizations included in the audit, the resulting number of cells in the stratification plan would likely lead to over-stratification, even for large samples.

A 4x3x2 matrix was built to reflect the number of possibilities in each of the above three categories, providing a total of 24 "cells" into which appointments could be sorted.

In 2010 certain portions of the population were under-sampled so as to better optimise the distribution of the full sample. A post stratification weighting adjustment ensured that any bias introduced by disproportionate sampling was largely minimized in the final population estimates.

Of the 206 randomly-sampled appointments, the Office of the Merit Commissioner identified 23 cases as being out-of-scope, primarily due to coding errors in the source data. These 23 cases were removed from the sample, leaving 183 appointments that were audited.

However, since 23 records represented a significant fraction of the sample size (i.e., 11%), BC Stats used the strata information to estimate back into the original population how many cases would likely be deemed to be out-of-scope if in fact the entire population of cases had been audited. The statistics presented in the rest of the report are based on this reduced population (183/942). In summary, random sampling was used to ensure broad-based auditing of all appointments. Sampling independently in the above-mentioned categories ensured correct proportional coverage of:

- a range of differently-sized organizations/ministries;
- permanent, temporary and direct appointments; and
- included versus excluded appointments.

It should be noted that, due to the fine-grained detail offered by the sampling plan, BC Stats was able to obtain representative coverage across several non-stratified categories, including new (external) hires versus employee (internal) hires. This, in turn, made it possible to develop a partial year-over-year analysis between the 2009 and 2010 audits, while still avoiding concerns of over-stratification and statistical bias. With these considerations in mind, the chance of audit was *virtually* identical for each and every appointment, while the correct proportion of audits remained guaranteed in the most important categories[3].

As a final note regarding the stratification plan, the calculation of sample weights was not limited to the sample strata, but included information from the differing sample rates for administrative and non-administrative appointments. In total, a set of 33 unique weights were created to adjust for bias in the overall sample.

[3] Due to the limited time frame of the 2010 audit, a year-over-year comparison of audit results was only feasible between the 2009 and 2010 audit years. The ability to compare the 2009 results with 2010 was made possible by the relatively high frequency of sample windows that occurred throughout the 2009 audit year. The resulting comparison focused on appointments that took place between September 4, 2009 and December 31, 2009 for the 2009 audit year, and appointments that occurred between September 1, 2010 and December 31, 2010 for the 2010 audit year. Unfortunately, due the complete absence of 'Merit Not Applied' findings in the September to December 2009 timeframe, results obtained from the comparison were not particularly informative, and as such, were not included in this report.

DISTRIBUTION OF AUDITS

The following four tables show how the audits are distributed according to various characteristics of appointments. Three of the four tables (appointment type, bargaining unit status and ministry/organization size) represent the categories that were used in sample stratifications for earlier iterations of the study. While the sampling methodology for the 2010 merit performance audit did differ from previous audits, the data presented in Tables 6 through 9 below has been organized in a format that reflects the tabulations from previous years' results to allow for year-over-year comparisons. In all cases, percentages were rounded to the first decimal place, and sum to 100%. The match between the sample percentages and the corresponding percentages among all appointments is quite close, suggesting that the sample is reasonably representative of the whole.

Table 6: Audits by Appointment Type

Appointment Type	Adjusted Number of Appointments	Percent of All Appointments	Number of Audits	Percent of All Audits
Direct Appointment	4	0.4%	3	1.6%
Temporary > 7 Months	81	8.6%	19	10.4%
Permanent Hire	857	91.0%	161	88.0%

Table 7: Audits by Bargaining Unit Status

Bargaining Unit Status	Adjusted Number of Appointments	Percent of All Appointments	Number of Audits	Percent of All Audits
Excluded	242	25.7%	44	24.0%
Included	700	74.3%	139	76.0%

Table 8: Audits by Organization Size

Organization Size*	Adjusted Number of Appointments	Percent of All Appointments	Number of Audits	Percent of All Audits
Large	700	74.3%	129	70.5%
Small	242	25.7%	54	29.5%

* Organization size was based on total regular employment at the start of the study period. In this table, organizations with more than 1,000 employees were deemed large, and organizations with 1,000 employees or less were deemed small (i.e., combines three sizes in the stratum: 500 to 1000 employees; 200 to 499 employees; and smaller than 200 employees).

Table 9: Audits by Hire Status

Hire Status	Adjusted Number of Appointments	Percent of All Appointments	Number of Audits	Percent of All Audits
Internal Hire	798	84.7%	159	86.9%
New Hire	144	15.3%	24	13.1%

USES AND LIMITATIONS OF AUDIT RESULTS

Sampling is used to control costs and minimize respondent burden. Auditing competition files after the competitions have closed is both expensive and time-consuming. As each file in an audit must be reviewed with the same degree of diligence, there are limited cost savings for conducting a larger sample. The appointments selected for auditing provided a random and representative sample of all appointments that occurred between September 1, 2010 and December 31, 2010 and as a result, the audit selection was unbiased in regards to the sampling framework.

In terms of year-over-year comparisons, while the number of audits conducted in 2010 (183) was less than in 2009 (302), this was a result of a shorter timeframe of four months versus a full calendar year in 2009. Results from the 2010 audit continue to offer a high degree of assurance about the application of merit in the appointment process. Given the precision of the estimates, and the representativeness of the sample, a high level of confidence can be placed in the accuracy of the 2010 merit findings.[4]

[4] See the Appendix, page 10 of this report, for a summary of the estimated audit findings and their associated confidence intervals.

APPENDIX

ESTIMATES AND CONFIDENCE INTERVALS FOR 2010 APPOINTMENT AUDIT DATA

In order to apply confidence intervals to the estimates for the 2010 Merit Performance Audit, BC Stats employed a methodology that was similar, but not identical to what was used in previous annual merit performance audits. The primary change in the 2010 audit was the statistical method used to generate the confidence intervals. Specifically, the confidence intervals in 2010 were based on a Poisson distribution, whereas the intervals from previous years employed an F-distribution. While both methods provided accurate estimates, the Poisson offered a greater degree of flexibility, particularly for generating estimates for rare events.

- In order to minimize sample bias and produce the best estimates, the micro data was weighted prior to generating the estimates.
- As the sample size (183) relative to the rate of 'Merit Not Applied' findings was so low, a normal approximation to the binomial could not be used. As a result, a more exact calculation was made through a Poisson distribution. This in turn produced asymmetric confidence intervals around the estimates.
- The interpretation of the 95% interval is that there is less than one chance in 20 (less than 5% probability) that the true population percentage lies outside the interval.

Table10: Estimated Audit Findings and Confidence Intervals

Audit	Audit Finding	Estimate (weighted)	95% Confidence Interval	
			Lower	Upper
2010 Audit (Sept 1 - Dec 31)	Merit Not Applied	3.9%	1.5%	7.1%
	Unable to Determine	0.0%	0.0%	2.0%
	Merit With Exception	17.4%	11.7%	23.7%
	Total	21.3%	15.2%	28.5%

If you have any questions
about the information in this report,
please contact
BC Stats.
250-387-8972

APPENDIX C

BC Public Service Agency's Response to Recommendations

BRITISH COLUMBIA

Where ideas work

July 20, 2011 CLIFF: 4905

Fiona Spencer
Merit Commissioner
Suite 502 – 947 Fort Street
PO Box 9037 Stn Prov Govt
Victoria, BC V8W 9A3

Dear Fiona Spencer:

Thank you for providing the BC Public Service Agency an opportunity to respond to the recommendations provided in the 2010 Merit Performance Audit. The audit results indicate that while improvements have been achieved in the area of final notification, certain improvements continue to be required in the key areas of years of continuous service and documentation.

Throughout 2010, significant change and challenges in human resources management throughout the BC Public Service were experienced. Through creative planning and innovative implementation strategies, the BC Public Service Agency was able to work across government to minimize the impact of workforce adjustment and ensure that public servants were treated fairly and respectfully.

Initial targets to reduce the BC Public Service workforce by 5 percent were reduced by 2.5 percent. Of the 772 employees that were impacted, 250 subsequently found new positions within the BC Public Service. This reduction resulted in 7,068 regular appointments being achieved. During this period of increased workload, and the implementation of a new electronic Recruitment System, the BC Public Service Agency did not fully realize the improvements that were noted in previous Merit Commissioner's reports. While more work has and will be done to effectively and efficiently address these concerns, the BC Public Service Agency remains committed to making continual improvements to the recruitment processes when required and noted by the Merit Commissioner.

Please find the Public Service Agency's responses to the Merit Commissioner's recommendations below:

Documentation:

The Hiring Centre within the BC Public Service Agency is responsible for retaining competition documentation. The Hiring Centre works closely with hiring managers across government ministries and agencies to ensure competition documentation is completed accurately. The 'Competition File Contents Checklist' clearly outlines the documents required to complete a competition file and indicates those documents that will be retained electronically in the Recruitment System. Hiring managers have the choice to either send their documents to the Hiring Centre or retain them. If the hiring manager chooses to retain documents, and the competition is identified in an Office of the Merit Commissioner audit, the hiring manager provides the Hiring Centre scanned copies to meet the audit requirements.

../2

In keeping with government's Green initiative to reduce the amount of hard copy files and use of paper, electronic competition files are used and retained. During the transition from hard copy paper files to an electronic system, the Hiring Centre is working with the Office of the Merit Commissioner to ensure complete documentation is received in a well organized manner. The Hiring Centre has made adjustments to the recruitment system to mitigate technical problems that have been previously identified and will continue to be pro-active and make adjustments as necessary.

The recommendation that all documents provided be scanned is being addressed and the Agency is retaining all required documents. In response to requesting the consent of the Merit Commissioner be sought to define any category of record that does not have to be retained, the Hiring Centre worked collaboratively with the Office of the Merit Commissioner to create the 'File Completion Checklist' as a means to clearly define all the documents that must be included in the process. The BC Public Service Agency will continue to work with the Office of the Merit Commissioner to ensure that systems and processes are in place to address this recommendation.

Notification:

The Hiring Centre reinforces and recognizes how important effective feedback is to applicants. Information regarding the review process is available on the Employment Opportunities Website. Hiring managers are also trained about notification processes and issuing regret letters as a method to reduce the potential for an internal inquiry or review of a hiring decision. When an applicant requests feedback, it is available to them throughout the recruitment process.

More recently, a one-page information sheet outlining the review process has been posted to the Employment Opportunities Website. This information is available to all applicants. In addition, the Hiring Centre's suite of recruitment services, offered to hiring managers, includes monitoring the five-day review period.

The Hiring Centre has developed 'just-in-time' information that will be sent to hiring managers at various stages of the recruitment process. An information sheet on the review period will be sent to hiring managers towards the end of the process reminding them of their and their employees' rights respecting reviews of an appointment decision. The Hiring Centre has developed targeted information for applicants about the review process and it is being launched to hiring managers and applicants in August 2011.

Corporate Hiring Pools:

To meet the growing and varied needs of individuals, work in the BC Public Service is becoming more flexible and adaptive than was previously reflected in traditional public sector work models. Individuals will be called on to do a range of things within their career as public servants, and the BC Public Service Agency is constantly seeking ways to ensure that these new approaches to work and career development are supported through merit-based processes.

Corporate Hiring Pools are just one of a range of new strategies to hire staff and support their mobility. First introduced in 2007 to provide a supply of pre-screened candidates for clerical openings in Victoria, Corporate Hiring Pools are being used more broadly for clerical positions and for some specific high volume occupations and currently involves Employment Assistance Workers. The basic steps to establishing a hiring pool is fully compliant with the merit principle which includes:

.../3

- Opportunities available to interested applicants;
- Applicants are screened by the Hiring Centre against basic criteria on a meet/do not meet basis;
- Applicants are available for referral to a specific vacancy that matches other characteristics of the individuals in the pool (e.g. location, special skills, interest in working in a particular Ministry, etc.);
- Referred candidates are assessed in more detail so that greater or fewer candidates matched with the requirements of the position can be established; and, finally,
- A successful candidate is selected.

We believe that Corporate Hiring Pools are executed through a merit-based process, increase efficiencies, and are a cost effective approach to hiring in certain circumstances. The Agency is willing to work with the Office of the Merit Commissioner to address concerns raised by applicants about their experiences in the process.

Years of Continuous Service:

The calculation of years of continuous service has been centralized in the Hiring Centre. Hiring managers are advised and encouraged to utilize this service. Training has been implemented and further training and monitoring will be undertaken to ensure improvements are realized in this area.

We appreciate the efforts made by the Office of the Merit Commissioner to recommend methods to improve hiring in the BC Public Service Agency and we are committed to continually improving our practices. This past year has seen significant transformation of the way human resources services are provided across the BC Public Service. The transformation will continue in 2011 in order to meet not only the changing needs in the workplace but to ensure we meet the needs of our clients and the citizens of British Columbia. The tools, training, information and services being made available to hiring managers by the BC Public Service Agency will bring about demonstrated improvements. We remain confident and will continue to enhance processes that focus on hiring the right individuals for each opportunity and enabling them to build an exciting and fulfilling career in the BC Public Service.

Yours truly,

Lynda Tarras
Head of the BC Public Service Agency

APPENDIX D

Public Service Act

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Victoria, British Columbia, Canada

PUBLIC SERVICE ACT
[RSBC 1996] CHAPTER 385

Contents

Part 1 — Introductory Provisions

1 Definitions
2 Purposes of Act
3 Application of Act
4 Consultation process

Part 2 — Agency Head and Merit Commissioner

5 BC Public Service Agency
5.01 Appointment of merit commissioner
5.1 Merit commissioner
5.2 Annual report of merit commissioner
5.3 Expenses of merit commissioner
6 Delegation
7 Access to facilities and records

Part 3 — Appointments to the Public Service

8 Appointments on merit
9 Probation
10 Exceptions to section 8
11 Repealed
12 Deputy ministers
13 Deputy ministers' pensions
14 Declaration of deputy minister status
15 Appointment by Lieutenant Governor in Council

Part 4 — Review of Staffing Decisions

16 Definitions
17 Request for feedback on staffing decision
18 Inquiry into staffing decision
19 Review by merit commissioner
20 Power to compel persons to answer questions and order disclosure
20.01 Contempt proceeding for uncooperative person
20.02 Immunity protection
20.1 Decision final

Part 5 — Miscellaneous

21 Oaths
22 Dismissal and suspension of employees
23 Repealed
24 Annual report
25 Power to make regulations
26 Transitional — deputy ministers' pensions

Part 1 — Introductory Provisions

Definitions

1 In this Act:

"agency" means the BC Public Service Agency continued under section 5 (1);

"agency head" means the head of the agency appointed under section 5 (2);

"auxiliary employee" means an auxiliary employee as defined in the regulations;

"deputy minister" means

(a) a person appointed as a deputy minister under section 12, or

(b) subject to section 14, a person who by an Act or by an order in council under that section is declared to have the status of a deputy minister;

"employee" means a person appointed under this Act other than a person appointed under section 15;

"merit commissioner" means the merit commissioner appointed under section 5.01.

Purposes of Act

2 The purposes of this Act are to

(a) facilitate the provision of service to the public in a manner that is responsive to changing public requirements,

(b) recruit and develop a well qualified and efficient public service that is representative of the diversity of the people of British Columbia,

(c) encourage the training and development of employees to foster career development and advancement,

(d) encourage creativity and initiative among employees, and

(e) promote harmonious relations of the government and employees and bargaining agents that represent employees in the public service.

Application of Act

3 Except as otherwise provided in this Act or in another Act, this Act applies

(a) to all ministries of the government, and

(b) to any board, commission, agency or organization of the government and its members or employees, to which the Lieutenant Governor in Council declares this Act, or a provision of this Act, to apply.

Consultation process

4 (1) In this section, **"consult"** means seeking advice or an exchange of views or concerns prior to the making of a decision respecting the matters that determine merit under section 8 (2) or the making of regulations under section 25.

(2) The agency must consult with representatives of the employees' bargaining agents certified under the Public Service Labour Relations Act with respect to

(a) the application of the matters that determine merit under section 8 (2), and

(b) regulations that may affect the employees represented by the bargaining agents that the minister intends to recommend to the Lieutenant Governor in Council under section 25.

(3) In addition, the agency may consult with employees who are not represented by the bargaining agents referred to in subsection (2) with respect to the matters referred to in that subsection that affect members of those groups.

Part 2 — Agency Head and Merit Commissioner

BC Public Service Agency

5 (1) The division of the government known as the Public Service Employee Relations Commission is continued as the BC Public Service Agency under the administration of the minister.

(2) The Lieutenant Governor in Council must appoint, under section 12, an individual to be the agency head.

(2.1) to (2.5) [Repealed 2005-35-36.]

(3) The agency head is responsible for personnel management in the public service including but not limited to the following:

(a) advising the minister respecting personnel policies, standards, regulations and procedures;

(b) providing direction, advice or assistance to ministries in the conduct of personnel policies, standards, regulations and procedures;

(c) recruiting, selecting and appointing, or providing for the recruitment, selection and appointment of, persons to or within the public service;

(d) developing, providing, assisting in or coordinating staff training, educational and career development programs;

(e) developing, establishing and maintaining job evaluation and classification plans;

(f) acting as bargaining agent for the government in accordance with section 3 of the Public Service Labour Relations Act;

(g) developing, establishing and maintaining occupational health and safety programs;

(h) developing and implementing employment equity policies and programs;

(i) conducting studies and investigations respecting staff utilization;

(j) carrying out research on compensation and working conditions;

(k) developing and implementing mechanisms to ensure effective human resource planning and organizational structures;

(l) developing, implementing and maintaining a process to monitor, audit and evaluate delegations under section 6, to ensure compliance with this Act and the regulations;

(m) establishing and maintaining a personnel management information system;

(n) performing other duties assigned by the minister respecting personnel, consistent with this Act and the regulations.

(4) Subject to this Act and the regulations and on the recommendation of the agency head, the minister may issue policies respecting the matters referred to in subsection (3).

Appointment of merit commissioner

5.01 (1) The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint an individual to hold office as the merit commissioner under this Act.

(2) The merit commissioner is an officer of the Legislature and must

(a) faithfully, honestly and impartially exercise the powers and perform the duties of the office, and

(b) not divulge any information received under this Act, except if permitted by this Act.

(3) The Legislative Assembly must not recommend an individual to be appointed under subsection (1) unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the individual be appointed.

(4) The merit commissioner is to be appointed for a term of 3 years and may be reappointed in the manner provided in this section for further 3 year terms.

(5) The merit commissioner is entitled

(a) to be paid, out of the consolidated revenue fund, compensation as may be fixed by the Lieutenant Governor in Council, and

(b) to be reimbursed for reasonable travelling and out of pocket expenses personally incurred in performing the duties of the office.

(6) The Lieutenant Governor in Council may appoint an acting commissioner if

(a) the office of commissioner is or becomes vacant when the Legislative Assembly is not sitting,

(b) the commissioner is suspended when the Legislative Assembly is not sitting,

(c) the commissioner is removed or suspended or the office becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly under subsection (1) before the end of the session, or

(d) the commissioner is temporarily absent because of illness or for another reason.

(7) An acting commissioner holds office until

(a) a person is appointed under subsection (1),

(b) the suspension of the commissioner ends,

(c) the Legislative Assembly has sat for 30 days after the date of the acting commissioner's appointment, or

(d) the commissioner returns to office after a temporary absence, whichever is the case and whichever occurs first.

Merit commissioner

5.1 (1) The merit commissioner is responsible for monitoring the application of the merit principle under this Act by

(a) conducting random audits of appointments to and from within the public service to assess whether

(i) the recruitment and selection processes were properly applied to result in appointments based on merit, and

(ii) the individuals when appointed possessed the required qualifications for the positions to which they were appointed, and

(b) reporting the audit results to the deputy ministers or other persons having overall responsibility for the ministries, boards, commissions, agencies or organizations, as the case may be, in which the appointments were made.

(2) In carrying out his or her responsibilities as merit commissioner under this section he or she must not conduct audits or issue reports in respect of the period before June 5, 2001.

(3) [Repealed 2005-35-38.]

Annual report of merit commissioner

5.2 (1) The merit commissioner must report annually, no later than May 31, to the Legislative Assembly concerning the merit commissioner's activities under this Act since the last report was made under this section.

(2) The Speaker must lay each annual report before the Legislative Assembly as soon as practicable, if it is in session.

(3) If the Legislative Assembly is not in session on the date of the annual report, or within 10 days after that date, the annual report must be promptly filed with the Clerk of the Legislative Assembly.

(4) The report of the merit commissioner under this section must not disclose

(a) personal information, as defined in Schedule 1 of the Freedom of Information and Protection of Privacy Act, relating to individuals who applied for or were appointed to positions in the public service, or

(b) the identity of persons who participated on behalf of the ministries, boards, commissions, agencies or organizations, as the case may be, in the selection of the individuals appointed to positions in the public service.

Expenses of merit commissioner

5.3 The merit commissioner may make a special report to the Legislative Assembly if the merit commissioner believes that the amounts and establishment provided for the office of merit commissioner in the estimates are inadequate for fulfilling the duties of the office.

Delegation

6 Subject to the regulations, the agency head may

(a) delegate any of his or her powers, duties or functions under this Act to an employee of the agency,

(b) with respect to employees of a ministry or a board, commission, agency or organization to which this Act applies, delegate any of his or her powers, duties or functions under this Act to

(i) a deputy minister or other employee of the ministry, or

(ii) a member, officer or employee of the board, commission, agency or organization,

(c) delegate dismissal authority under section 22 (2)

(i) to an assistant deputy minister or an employee who has an equivalent classification level to an assistant deputy minister, and

(ii) to a member or officer of a board, commission, agency or organization to which this Act applies,

(d) establish conditions, standards or requirements for any delegation, and

(e) amend, replace or revoke any delegation made under this section.

Access to facilities and records

7 For the purposes of carrying out their duties under this Act, the agency head and merit commissioner are entitled to access to

(a) ministries,

(b) boards, commissions, agencies and organizations that are declared to be subject to this section under section 3, and

(c) records, of ministries or of those boards, commissions, agencies and organizations, containing information pertinent to those duties or to personnel matters.

Part 3 — Appointments to the Public Service

Appointments on merit

8 (1) Subject to section 10, appointments to and from within the public service must

(a) be based on the principle of merit, and

(b) be the result of a process designed to appraise the knowledge, skills and abilities of eligible applicants.

(2) The matters to be considered in determining merit must, having regard to the nature of the duties to be performed, include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service in the public service.

(3) Regulations, policies and procedures with respect to recruitment, selection and promotion must facilitate

(a) opportunities for external recruitment and internal advancement to develop a public service that is representative of the diversity of the people of British Columbia, and

(b) the long term career development and advancement of employees appointed under this Act.

(4) Subject to the regulations, the agency head may direct in respect of a vacancy or class of vacancies in the public service, that applicants be

(a) limited or given preference in a manner intended to achieve employment equity objectives,

(b) limited to employees to encourage career development and advancement,

(c) limited to employees of a stated occupational group, position level or organizational unit, or

(d) limited to a stated geographical area or locale.

Probation

9 (1) If a person who is not an employee is appointed to a position in the public service, the person is on probation until he or she has worked the equivalent of 6 months' full time employment.

(2) If the appointment is made from within the public service, a probation period in the new position not exceeding the equivalent of 6 months' full time employment may be imposed.

(3) A deputy minister or the agency head may reject an employee during the probation period if the deputy minister or agency head considers that the employee is unsuitable for employment in the position to which he or she was appointed.

Exceptions to section 8

10 Subject to the regulations

(a) section 8 (1) does not apply to an appointment that is a lateral transfer or a demotion, and

(b) section 8 (1) (b) does not apply to the following:

(i) a temporary appointment of not more than 7 months in duration;

(ii) an appointment of an auxiliary employee;

(iii) a direct appointment by the agency head in unusual or exceptional circumstances.

Repealed

11 [Repealed 2003-88-10.]

Deputy ministers

12 (1) The Lieutenant Governor in Council may appoint deputy ministers, associate deputy ministers and assistant deputy ministers.

(2) An associate deputy minister has all the powers of a deputy minister.

(3) Sections 5.1, 8 and 18 do not apply to appointments under this section.

Deputy ministers' pensions

13 (1) Subject to subsection (2), when calculating the amount of a pension under the Public Service Pension Plan, continued under the Public Sector Pension Plans Act, each year of service as a deputy minister must be counted as 1 1/2 years of pensionable service.

(2) Subsection (1) does not apply

(a) to a person appointed as a deputy minister on or after September 1, 2001, or

(b) to a person holding the position of acting deputy minister.

(2.1) Despite subsection (2) (a), subsection (1) continues to apply to a person who is a deputy minister before September 1, 2001 and is reappointed as a deputy minister on or after that date as long as there is no break in service as a deputy minister.

(3) Despite the accrual of 35 years of pensionable service, contributions to the Public Service Pension Plan must continue for each additional year of service up to 35 years of contributory service.

Declaration of deputy minister status

14 The Lieutenant Governor in Council may declare that a person has the status of a deputy minister and may set terms and conditions of employment, including remuneration, for that person and specify which sections of this Act or the regulations apply to that person.

Appointment by Lieutenant Governor in Council

15 (1) The Lieutenant Governor in Council may appoint persons the Lieutenant Governor in Council considers

(a) will be acting in a confidential capacity to the Lieutenant Governor, Executive Council or a member of the Executive Council, or

(b) will be appointed to a position that requires special professional, technical or administrative qualifications.

(2) A person referred to in subsection (1) (a) or (b) may be appointed by the Lieutenant Governor in Council on terms and conditions, including remuneration, authorized by the Lieutenant Governor in Council or set out in the regulations.

(3) This Act, other than subsections (1) and (2) and sections 21 and 25 (3), does not apply to a person appointed under this section.

Part 4 — Review of Staffing Decisions

Definitions

16 In this Part, **"deputy minister"** means,

(a) with respect to a position in a ministry, the deputy minister of that ministry, and

(b) with respect to a position with a board, commission, agency or organization, the person having overall responsibility for the board, commission, agency or organization.

Request for feedback on staffing decision

17 (1) An employee who is an unsuccessful applicant for an appointment to the public service may, within the prescribed time, request from the individual responsible for the appointment an explanation of the reasons why he or she was not appointed.

(2) The responsible individual must provide an explanation as soon as practicable after receiving a request under subsection (1).

Inquiry into staffing decision

18 (1) An employee who has made a request under section 17 may request an inquiry into the application of section 8 (1) with respect to the appointment.

(2) A request under subsection (1) must be made within the prescribed period to the deputy minister responsible for the position and must include a detailed statement specifying the grounds on which the request is made.

(3) The deputy minister who receives an application under subsection (1), or a person designated by the deputy minister, must inquire into the appointment and confirm the appointment or proposed appointment or direct that the appointment or proposed appointment be reconsidered.

Review by merit commissioner

19 (1) An employee who is an unsuccessful applicant for an appointment to a position in a bargaining unit under the Public Service Labour Relations Act who has made a request under section 18 and disagrees with the decision of the deputy minister or designate under that section may request a review of the appointment by the merit commissioner on the ground that section 8 (1) has not been complied with.

(2) A request under subsection (1) must be made in writing within the prescribed period to the merit commissioner and may only be based upon the grounds submitted to the deputy minister under section 18 (2).

(3) Subject to the regulations, the merit commissioner must establish the procedure for the expeditious consideration of requests for reviews under subsection (1).

(4) If an applicant requests a review under subsection (1), the merit commissioner must, before undertaking the review, inform the deputy minister of the review.

(5) The merit commissioner may summarily dismiss a request for a review under subsection (1) if

(a) the request for review is not made within the time limit prescribed under subsection (2),

(b) the merit commissioner considers that the request for review is frivolous, vexatious or trivial or is not made in good faith,

(c) the request for review does not contain sufficient information to determine whether section 8 (1) has been complied with, or

(d) the grounds, even if proven, are not sufficient to establish that section 8 (1) has not been complied with.

(6) After conducting a review, the merit commissioner may

(a) dismiss the review, or

(b) direct that the appointment or the proposed appointment be reconsidered.

(7) This section does not apply with respect to an appointment to the public service that is referred to in section 10.

Power to compel persons to answer questions and order disclosure

20 (1) For the purposes of a review under section 19, the merit commissioner may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the merit commissioner to answer questions on oath or affirmation, or in any other manner;

(b) produce for the merit commissioner a record or thing in the person's possession or control.

(2) The merit commissioner may apply to the Supreme Court for an order

(a) directing a person to comply with an order made under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (1).

Contempt proceeding for uncooperative person

20.01 The failure or refusal of a person subject to an order under section 20 to do any of the following makes the person, on application to the Supreme Court by the merit commissioner, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

(a) attend before the merit commissioner;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records or things in the person's possession or control.

Immunity protection

20.02 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the merit commissioner, or a person acting on behalf of or under the direction of the merit commissioner, because of anything done or omitted

(a) in the performance or intended performance of any duty under section 19, or

(b) in the exercise or intended exercise of any power under sections 19 to 20.01.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Decision final

20.1 A decision of the merit commissioner under section 19 is final and binding.

Part 5 — Miscellaneous

Oaths

21 A person appointed to the public service and a person appointed under section 15 must swear or affirm an oath in the prescribed form.

Dismissal and suspension of employees

22 (1) The agency head, a deputy minister or an employee authorized by a deputy minister may suspend an employee for just cause from the performance of his or her duties.
(2) The agency head, a deputy minister or an individual delegated authority under section 6 (c) may dismiss an employee for just cause.

Repealed

23 [Repealed 2007-21-6.]

Annual report

24 The minister must lay before the Legislative Assembly as soon as practicable, a report for the fiscal year ending March 31 respecting the work of the agency.

Power to make regulations

25 (1) On the recommendation of the minister, the Lieutenant Governor in Council may make regulations respecting government personnel management, including regulations respecting the following:

(a) the definition of "auxiliary employee" in section 1;

(b) recruitment, selection and appointment of staff including standards and procedures respecting advertising vacancies and who may apply for those vacancies;

(c) probation periods for employees who are appointed to positions in the public service;

(d) health and safety of employees;

(e) terms and conditions of employment;

(f) job evaluation and classification;

(g) standards of employee conduct;

(h) all matters respecting discipline, suspension and dismissal of employees;

(i) monitoring and auditing of all personnel functions.

(2) Regulations under subsection (1)

(a) may be different for different categories of employees, and

(b) may be made retroactive to a date not earlier than the date this section comes into force, and if made retroactive are deemed to have come into force on that date.

(3) The Lieutenant Governor in Council may make regulations respecting the terms and conditions of employment of persons appointed under section 15.

(4) The Lieutenant Governor in Council may make regulations respecting inquiries and reviews under Part 4 including regulations respecting the manner of applying for an inquiry under section 18 or a review under section 19 and the time limits for those applications.

(5) [Repealed 2003-88-12.]

Transitional — deputy ministers' pensions

26 (1) Despite section 13, section 4.1 of the Public Service Act, S.B.C. 1985, c. 15, continues to apply with respect to a person who became a deputy minister before November 5, 1991 and to whom the section would otherwise have applied.

(2) For greater certainty, a deputy minister appointed on or after September 1, 2001 has no claim for payment of compensation because he or she is ineligible for the benefit provided under section 13 (1).

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APPENDIX E

Glossary

AGENCY HEAD

The Head of the BC Public Service Agency (BCPSA), who is appointed under section 5(2) of the *Public Service Act*.

AUXILIARY CONVERSION

The collective agreements for unionized employees provide for the conversion of an employee from auxiliary status to regular status. To be eligible for conversion, the employee must have worked 1827 hours (equivalent to one year full-time) in 33 pay periods (approximately 15 months) and have been employed for work which is of a continuous full-time or continuous part-time nature.

AUXILIARY APPOINTMENT

The appointment of an individual to work that is not of a continuous nature.

As defined by regulation, "For the purposes of the *Public Service Act*, "Auxiliary employee" means an employee who

a) is specified under a collective agreement to be an auxiliary employee, or
b) is not covered by a collective agreement and performs work by (i) substituting for another employee on maternity, parental, adoption or other extended leave or on assignment to a special project; or (ii) working on a special project or other work of limited duration."

The term is also similarly defined in the applicable collective agreements with the bargaining units.

BARGAINING UNITS

The BC Government and Service Employees' Union (BCGEU), the Professional Employees Association (PEA), and the Nurses' Union (BC Nurses' Union and Union of Psychiatric Nurses).

BC PUBLIC SERVICE

Refers to:

a) all ministries of the government, and

b) any board, commission, agency or organization of the government and its members or employees, to which the Lieutenant Governor in Council declares the *Public Service Act*, or a provision of this *Act*, to apply.

DEMOTION

The movement of an employee to a position with a lower maximum salary than their previous base position.

DIRECT APPOINTMENT

Under the authority of the *Public Service Act*, an employee who has been directly appointed to the public service by the Head of the BC Public Service Agency in unusual or exceptional circumstances.

DUAL TEST OF MERIT

Section 5.1(1) of the *Public Service Act* requires the Merit Commissioner to conduct random audits of appointments to assess whether:

a) recruitment and selection processes are properly applied, to result in merit-based appointments, and

b) individuals appointed are qualified.

FACTORS OF MERIT

Section 8(2) of the *Public Service Act* outlines the matters to be considered in determining merit. These include the applicant's education, skills, knowledge, experience, past work performance, and years of continuous service in the BC Public Service.

HIRING CENTRE

In this service delivery model, the BC Public Service Agency, through the Hiring Centre, provides centralized hiring administration and advice to client organizations and assumes responsibility for certain phases of a staffing process, as defined in a recruitment plan established at the beginning of a hiring process. The Hiring Centre is also responsible for corporate recruiting and for the centralized retention of documentation to support staffing decisions.

INDIVIDUAL MERIT

Under section 10 of the *Public Service Act*, there are exceptions permitted to the general statutory requirement for a competitive process. Auxiliary appointments, appointments of regular employees for temporary periods of seven months or less, and direct appointments by the Agency Head require consideration of an individual's merit for appointment but a competitive process is not required.

LATERAL TRANSFER

A lateral transfer, provided for under section 10(a) of the *Public Service Act*, refers to the movement of an employee to a position with the same maximum salary as their base position. The lateral movement of an employee resulting from a competition is not exempt from the requirement for a merit-based process.

MERIT PRINCIPLE

Section 8 of the *Public Service Act* states that all appointments to and within the public service must be based on the principle of merit. (There are some exceptions to this listed in section 10.) Merit is commonly accepted to mean that appointments are made on the basis of an assessment of competence and ability to do the job, and are non-partisan. Order in Council appointments are excluded from this requirement.

MERIT NOT APPLIED (MNA)

A category of audit finding by the Merit Commissioner: the appointment was found to not be the result of a merit-based process and/or the individual was not qualified for the position to which he or she was appointed.

MERIT PERFORMANCE AUDIT

The conduct of a random audit of appointments to and from within the public service, used by the Merit Commissioner to assess appointments against the dual test of merit as set out in the *Public Service Act*. (See "Dual Test of Merit".)

MERIT WITH EXCEPTION (MWE)

A category of audit finding by the Merit Commissioner: the appointment was found to be based on merit, but issues were identified with either the conduct of the process or the application of basic hiring policy or collective agreement obligations.

ORDER IN COUNCIL (OIC) APPOINTMENT

As provided by section 15 of the *Public Service Act,* individuals appointed by the Lieutenant Governor in Council. These appointments are outside the jurisdiction of the Merit Commissioner.

PROMOTION

The appointment of an employee to a position with a higher maximum salary than their previous base position.

QUALIFIED RELATIVELY EQUAL (QRE)

Under section 8(2) of the *Public Service Act,* one of the six factors that must be considered when determining merit is an employee applicant's years of continuous service in the public service. In hiring for positions in the BCGEU, the "qualified relatively equal" calculation is the agreed-upon method of assessing this factor.

REGULAR APPOINTMENT

The appointment of an individual who is employed for work that is of a continuous nature, either full-time or part-time.

RELATIVE MERIT

Section 8(1) of the *Public Service Act* requires appointments to and from within the public service to be based on the principle of merit and that relative merit be assessed through a process designed to appraise the knowledge, skills and abilities of eligible applicants. These requirements apply to permanent appointments and temporary appointments of employees exceeding seven months. Some appointment types require only the assessment of individual merit. (See "Individual Merit".)

SCREENING

An initial assessment of applicants' eligibility to be considered for a position, including any advertised restrictions such as in-service status, or geographic or ministry-specific restrictions.

SHORT-LISTING

Typically, an initial assessment of applicants' qualifications, as described in their application/resume, against the mandatory education and experience requirements of the position.

TEMPORARY APPOINTMENT

The appointment of a regular employee to another position for a limited period of time (e.g., to cover an employee on leave or to undertake a time-limited project, seasonal or temporary relief work).

Merit Commissioner

www.meritcomm.bc.ca

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